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American Law School Review

Alfred Findlay Mason, Samuel Epes Turner

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The American Law School Review

An Intercollegiate Law Journal

A. F. MASON, Editor

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A. F. MASON, Editor

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No. 1

Meeting of the Association of American Law Schools—1911

THE eleventh annual meeting of the Association of American Law Schools convened at Boston, Mass., on Monday and Tuesday, August 28 and 29, 1911. The session of August 28th was held in the Walker Building, Massachusetts Institute of Technology, while the session of August 29th was held in Langdell Hall of the Harvard Law School at Cambridge. After the meeting was called to order by the President, William R. Vance, of the Yale University Law School, the roll of the schools belonging to the Association was called. The roll disclosed the following representatives in attendance:

Cincinnati Law School: Francis B. James, Elden R. James, Lawrence Maxwell.

Columbia University School of Law: Charles Thaddeus Terry, Francis M. Hardick, Harlan F. Stone.

Cornell University College of Law: Alfred Hayes, Jr., Frank Irvine.

Creighton University College of Law: Paul L. Martin.

George Washington University Law School: Melville Church.

Harvard University Law School: W. E. Seevey, Joseph Warren, Joseph H. Beale, Jr., Roscoe Pound, Bruce Wyman, Eugene Wambaugh.

Leland Stanford, Jr., University School of Law: C. H. Huberich.

Northwestern University School of Law: George P. Costigan, Jr., F. B. Crossley, Edwin R. Keedy, Albert M. Kales, John H. Wigmore.

Pittsburgh Law School: John D. Shafer, James C. Gray.

St. Louis Law School: W. S. Curtis.

State University of Iowa College of Law: Charles Noble Gregory, Austin W. Scott.

Syracuse University College of Law: Howard V. Rulison, Louis L. Waters.

Tulane University of Louisiana Law School: Monte M. Lemann, Charles K. Burdick, D. O. McGovney.

University of Chicago Law School: Julian W. Mack, Ernst Freund.

University of Colorado School of Law: Lucius M. Cuthbert.

University of Denver College of Law: George C. Manly.

University of Illinois College of Law: Edward S. Thurston.

University of Kansas School of Law: Henry C. Hill, W. L. Burdick.

University of Michigan Law School: Evans Holbrook, J. L. Clark, Henry M. Bates.

University of Minnesota College of Law: James Paige.

University of Missouri School of Law: Manly O. Hudson, Selden P. Spencer, John D. Lawson.

University of Nebraska School of Law: Henry H. Wilson, E. B. Conant.

University of North Dakota Law School: Luther E. Birdsall, Harrison Bronson, A. A. Bruce.

University of Pennsylvania Law School: William E. Mikell, Crawford D. Hening, James T. Lichtenberger, Ralph C. Baker, William Draper Lewis.

University of Southern California College of Law: Earl K. Backus.

University of Texas Department of Law: B. D. Tarlton.

University of Wisconsin Law School: H. S. Richards, W. U. Moore, E. A. Gilmore, John B. Sanford.

Washington College School of Law: E. B. Osborn.

Western Reserve University Franklin D. Backus Law School: Alexander Haddon, Homer H. Johnson.

Yale University: William R. Vance, Arthur L. Corbin, Henry Wade Rogers.

The following papers were read:

PRESIDENT'S ADDRESS

The Ultimate Function of the Teacher of Law

By WILLIAM R. VANCE
Professor of Law, Yale University

The work of the Law School in the American university is now so fully established in public estimation that it is fitting that this Association should seriously consider what is the ultimate function of the teacher of law as a factor in the complex scheme of our social organization. The primary and recognized function of the law teacher is to give to his students such technical training in the law as will prepare them for efficient service at the bar; and this is to be accomplished principally by teaching them to reason accurately in terms of those rules of law and procedure that have been laid down by the courts in the United States and England. The secondary function of the law teacher, and that which will ultimately prove to be of no less importance, will be to serve as an efficient agency in bringing about the wise, comprehensive, and prompt adaptation of our law and procedure to the new and changing needs of society. It is the purpose of this address to discuss this secondary or ultimate function; but in order to do so it will first be necessary to consider those circumstances in the development of our system of legal education that gave rise to the segregation of teachers of law as a class.

In early days young men just grew up into the legal profession, somewhat after the fashion of Topsy. It is true that they usually entered the office of a friendly attorney, who was supposed to direct the student's reading in the meager library possessed by lawyers of that time; but it is probable that in the great majority of instances the direction was perfunctory, and the student was compelled to educate himself. George Wythe complained that he was wholly neglected by his instructor, and considered the time spent in his office wasted, while Joseph Story wrote that, when he went to read law in the office of Samuel Sewall, of Marblehead, that excellent man put into his hands for reading "Coke on Littleton," and left forthwith for Washington to enter upon his duties as a member of Congress. At first Coke was too much even for Story, for we are told that, after a day spent in a fruitless attempt to read with understanding that truly dreadful book, he sat himself down and wept bitterly. If such was the experience of the patient and incredibly industrious Story, we shudder to recall what must have been the sufferings of the less gifted law students of the day. Pat-

rick Henry did not even go through the form of reading under an attorney, but wholly without assistance contended with Littleton's Tenures and a volume of the acts of the Virginia General Assembly for a period of six weeks, after which he secured admission to the bar of which he afterwards became so conspicuous an ornament.

Indeed, the biographies of lawyers of this early day show clearly that the ceremony of admission to the bar had little relation to the candidate's existing knowledge, but turned rather upon a rough estimate formed by the examining committee as to his capacity to qualify by the time he might be able to secure clients. This appears clearly in the account given of the examination of Patrick Henry. All of his distinguished examiners were agreed that he had no knowledge of the law, but only one of them, George Wythe, refused to sign his certificate of qualification, and that on the ground that he had not sufficient ability either to learn or practice the law.

The earlier law schools, like those of Judge Reeves, at Litchfield, and of Judge Tucker, at Winchester, Virginia, and even the more scientifically conceived one at William and Mary were essentially personal in their nature, not unlike Mr. Tidd's class in London (whither the desire to master the intricate details of pleading turned young Jock Campbell, just entering upon the career that set the friendless Scotch boy upon the woolstack). Here a lawyer who was proved to possess the gift of teaching was sought out as instructor by a score or so of young men, who thus as a class obtained better instruction than would have been the case had they been distributed among as many separate offices. It was still the old method of preparing for the bar by reading in the office of an attorney, advanced one step towards greater efficiency; the teacher's efforts being actuated partly by his desire to help worthy young men forward to the realization of their ambition, and partly by the fees paid by his pupils. The conviction was deep-rooted in the profession that reading in an office was the only practical method of qualifying for the practice of the law. The idea of institutional training in the law as a science, as one of the activities of the college or university, was so foreign to the professional mind that even Sir William Blackstone's elegant and luminous lectures at Oxford could not render it popular in England. In this country the attempts made by the University of Pennsylvania, in 1790, and Columbia College, in 1793, to establish and maintain courses of instruction in law were total failures, though they were able to command the services as professors of such men as James Willson and James Kent. Nor was the effort of Harvard University, made in 1817, much more successful until Justice Story brought to it, in 1829, his great name and great

learning, and, better still, his indefatigable industry and kindly interest in the young men who gathered about him. The law school established at William and Mary College, in 1779, and that inaugurated at the University of Virginia, in 1824, were rather more successful, on account of the enlightened state of opinion in that commonwealth, due to the leadership of the remarkable group of able and cultured lawyers which glorified the first half century of Virginia's history as a state.

While the practicability of preparing young men for the bar in law schools, conducted as parts of University organizations, was thus slowly being demonstrated in a few more favored educational centers, the very great majority of young men were still reading for the bar in law offices, and the few law schools that sprang up in various parts of the country were little more than groups of students gathered in the offices of lawyers, whether in practice or on the bench, who had the gift of teaching.

But even in the best law schools, those incorporated within institutions of higher learning, there was scarcely a suggestion, prior to the Civil War, of the formation of a class of teachers of law, as distinguished from those lawyers engaged in practice. It was taken for granted that the law teacher must be one who had achieved eminence at the bar or on the bench, and that he should give to his students such time and thought as the demands of his practice or of his judicial office would permit. There were a few instances in which the incumbent of a professorship of law withdrew from practice, as at Harvard and the University of Virginia, but such withdrawals were rather from necessity than from design. In other words, the idea still persisted that a young man should qualify for the bar by reading under the direction of one actively engaged in the administration of the law.

The quarter century following the Civil War is an interesting period in the history of legal education in America. First, it saw a marked increase in the number of law schools and of the students attending them, due to a growing recognition of the superiority of the training received in the law schools over that had in law offices. Secondly, it gave rise to the night law school, sometimes established and maintained by men eminent at the bar or on the bench, with the generous intent to afford opportunity to young men of ambition and ability, but without financial resources, to secure a legal education, but often as a commercial enterprise, intended to add to the incomes of those engaged in promoting and conducting it. Thirdly, the most important event of the period was the slow emergence of the teachers of law as a separate class among lawyers. Many different conditions conspired to bring about this result. The most obvious cause is to be found

in the fact that many of the new State Universities, located in small communities, in which no considerable legal business was to be had, established departments of law and called to the professorships distinguished retired jurists, who were quite content with the dignified ease with which they occupied the teacher's chair, or practicing lawyers, who, in the university town to which they were compelled to remove, found themselves marooned in a desert place, not fruitful of litigation.

A more significant reason for the differentiation of the law teachers as a class from those practitioners giving instruction incidentally in law schools, lies in the fact that slowly came to be recognized by the profession and the public generally. The instruction given by those men who, like, for instance, the great Virginia teacher, Professor John B. Minor, devoted twelve hours a day to the task of learning what is, in truth, the law, and how to teach the law so learned, was far superior to that given by equally able and conscientious men who could give to the heavy task of the teacher only such bits of time as could be snatched from the exacting demands of a large practice. The result was that the law schools employing only practitioners as teachers inevitably began to lose standing, and the pressure to call in men who were willing to devote all of their time and interest to the work of teaching became too great to be withstood. But the real determining cause of the development of the class of law teachers lay deeper than either of the considerations just mentioned. It is to be found in the peculiar character of American case law. It is far more difficult for the lawyer in any American state to determine what is the law governing a doubtful question than for his English brother. In England there is substantially but the one jurisdiction, and the one court of last resort. A decision of a higher court, once rendered, stands as the law for the whole land, unless it be reversed on appeal. But not so in the United States. Not only has the lawyer in any state to analyze and harmonize the often discordant and conflicting decisions of the highest court of that state, but he must also bring into his mosaic of "matched cases" the decisions of the federal courts sitting in his state, which, on matters of general commercial law, are not bound even to try to follow the state courts. But that is not all. If his case is absolutely concluded by a previous decision exactly in point in his state appellate court, he may rest with a mind easy save for the faint fear that his precedent may be overruled. But if his precedent is a little "off center," he may expect it to be distinguished away by reasoning drawn from similar, but conflicting, cases found in any one or more of forty-five other states, or even in England or Canada. And if there are no precedents in his

own state clearly applicable to the case at bar, in supporting his contention, he is, in sporting language, up against the whole field.

Under such circumstances, in the search for authorities, state lines are not very broad. In a very wilderness of inconsistent and perplexing decisions rendered in almost a half hundred jurisdictions, he must first find the cases that are pertinent, and then he must by a process of pure reasoning sift out those cases that are well reasoned from those that are not, and make manifest to his court the correctness of his conclusions. But even this is not the whole of his task, difficult as it is. Aided by steam and electrical communication, commercial and industrial conditions are changing with a rapidity before undreamed of. Lord Bowen said that the law follows business. But the law is a notorious laggard. If business has greatly increased the speed of its progress, and the law keeps its ancient and slow pace, the interval of its lagging will become disastrously great. Therefore the law must quicken the pace of its development. The business interests, armed with arguments based on great economic truths, are pressing hard on the courts. The lawyer must know and appreciate these business interests and economic truths, and so present them to the court that the ancient rules of law may be applied to modern industrial conditions in such a manner as to be consistent with the great economic principles and not in opposition to them.

It is clear that the task of the lawyer is a heavy one. No rule of thumb will help him. No statement in a text-book, whether in black-letter or italics, will answer his need, nor will any general principle of law that may have fallen, however eloquently, from the lips of a distinguished lecturer. The only help for our lawyer lies in his capacity to reason accurately and convincingly from fixed precedents. Hence there slowly arose a recognition of the fact that that law school did most for its students which taught them to think clearly and accurately in terms of settled legal principles, to analyze, test, and weigh precedents under the fierce light of reason, and trained them in the art of applying old principles to new states of fact.

Mr. Langdell had appeared on the scene at Cambridge, and had demonstrated that law should be taught inductively, as well as any other science. His views and his methods have spread over the land, until it is difficult now to find a place so remote from the strong current of educational thought as not to recognize that the mere imparting of information as to rules of law, however important that may be, is but secondary to the chief work of the law teacher in training his pupils how to think clearly along legal lines.

Recognition of this as the proper function

of the teacher compels the lawyer in the law school to make his election as to whether he will serve his clients or his students. He cannot serve both as they should be served. If the law is a jealous mistress in the courthouse, she is a veritable tyrant in the modern law school. The teacher who endeavors to teach properly courses extending over seven or eight hours a week by the so-called case system may spend all of his possible time in preparation, without any regard whatever to union limits, and yet feel no little trepidation as he faces a class of fifty or a hundred bright young men who have spent hours in reading, comparing, and discussing the cases on the subject-matter of the lecture, and who have been trained to demand the reason why.

By the process thus described there has been developed, and now exists, a very considerable body of lawyers whose time and thought are primarily devoted to the teaching of law, and who may well enough be called professional teachers. There are many other able and admirable men, lawyers in practice and judges on the bench, who lecture more or less in law schools to the distinct profit of the students. There are many of them who, undoubtedly, are induced to do so by the highest motives, and I would guard myself against being thought to disparage the value of their services to legal education. But in the nature of things they cannot find the time, even if they can command the intensity of interest, necessary for the kind of work now expected of the class of professional teachers. Again, by way of precaution, I should state that all recognize the fact that there are dull, lazy, and inefficient teachers of the professional class, whose work is in every way inferior to that of the occasional lawyer, who brings from his busy office to the classroom such a brilliant mind, coupled with a genius for teaching, that his lack of time for classroom preparation is offset by his unusual natural endowments. But it is of the class of professional teachers that I wish to speak further.

With the recognition of the law teacher as a lawyer withdrawn from practice and its emoluments, and of the university law school as a place where the law is scientifically studied and taught for the good of the state rather than for the commercial gain of the teachers, the administrative authorities of our great universities are beginning to regard the law school in a different light. Heretofore, with but few exceptions, the law school's connection with its university had been little more than nominal. It was regarded rather as an affiliated, independent school than as an integral part of the general scheme of higher education, and as such it was expected to pay its own way from the fees received from students, and was not allowed to share

in the income from endowments of privately endowed institutions, or in the appropriations made for the maintenance of state universities. Indeed, such is still the attitude towards the law school in many institutions.

But a marked change is in progress. Quite a number of the law schools of privately endowed institutions have now received separate endowments, or are allowed to participate in the income from general endowments, and in many of the state institutions the law schools are no longer expected to support themselves, but are maintained by the state in the same manner as other important departments of the university. The result of this changed attitude, in relieving the law school of the necessity of earning each day its daily bread, has been to improve greatly the methods of instruction and standards of scholarship, and to add greatly to the dignity of the law professorship. Salaries have been increased, not, it is true, to such an extent as to compare favorably with the income of successful lawyers in practice, but yet so as to provide a fair livelihood, and so to render professorships attractive to such of the able members of the profession as may chance to possess scholarly tastes and the teacher's gifts and temperament. But, most important of all, with the banishment of the pernicious idea that each teacher must earn his keep in the fees paid by the students that sit under his instruction, there has arisen a tendency to lessen the number of hours of instruction required, and to recognize the fact that in effective study and research in the nature and history of the law and its present state he is rendering a valuable service. It is in this latter tendency that we see hope of the development, on the part of law teachers, of a function of the first importance to the profession of the law and to society at large.

That there is widespread discontent with the state of our law is beyond question. That our system for the administration of the law is not working as well as we could wish is evidenced, not only in the reported cases that now fall upon us "thick as leaves in Vallambrosa," but in every daily newspaper that one may take up. The meaning of it all is that many of our rules of law, that were sweetly reasonable when applied to the conditions that gave them rise, now no longer fit when those conditions have radically changed. Our law has lagged too far behind our business—is too little suited to the needs of an advanced society. In some of our states there exists in a flourishing condition in this year of grace 1911 rules of law five hundred years out of date—as, for instance, the rule in *Shelley's Case* (or the legal theory of rents, which has, however, been so covered over with a statutory crazy quilt, that we get on with it

very comfortably). There still exists in our law rules that were unreasonable at the time of their origin, and are even more so now—as, for instance, the doctrine of warranties in insurance law, and the so-called rule in *Spencer's Case*, both now badly battered by statutory assaults. The call for law reform is heard from every corner of the land. All the bar associations pass resolutions about it, and appoint committees, the labor unions insist upon changes, and, it is said, the “malefactors of great wealth,” and those other “undesirable citizens” who once rejoiced in the proud title of Captains of Industry, occasionally gather in some secluded office in Wall Street, and utter a whispered prayer for a change in the laws.

But, granting that it were a good thing that our substantive law were better adapted to our present industrial and commercial conditions, and our procedure so reformed that the vexatious delays and miscarriages of justice that too often distress the unfortunate litigant would give place to speedy justice, yet how are we to go about securing the wished-for betterment? It is perilous to change isolated rules without careful regard given to the indirect effect that will be produced upon other parts of our complex and extensive legal system. The state legislatures are always busy applying statutes here and there, but such patchwork rarely improves the appearance of the “seamless garment of the law,” and sometimes fails to make it fit any better. Bentham and his followers thought the remedy lay in clear statement; but codification has not brought legal salvation. The clear statement of a rule that is unsound or unsuitable, economically or sociologically, will not prevent the rule in operation from working mischief to the body politic.

In latter days many people and some political leaders have sought to go to the root of the difficulty by holding a bludgeon over the judges designated to administer the law, and by the recall to discharge ignominiously those judges who enforce the law in such a manner as seems to the people unfit. Under the recall one would be uncertain whether to feel more sorry for the judge who is sworn to administer the law of the land, and yet must be retired in disgrace if in so doing he renders a judgment that seems to the populace unjust, or for the poor lawyer, who, in advising a client, may have to balance the shifting state of an unsettled public sentiment against the fixed unreason of a settled rule of law.

But it is clear that there is only one class of men who can perform this necessary task of adapting the law, our corpus juris, to the needs of society under existing industrial and sociological conditions. It must be done by the lawyers. But, having reached this conclusion, we are met with another difficulty that seems heretofore to have

proved fatal. The successful accomplishment of this work of adaptation will require intellectual ability of the very highest order, and wide and balanced learning in a field as broad as our social organization itself and as varied as human activities and interests. It will also demand immense labor, involving the expenditure of much time in research, in comparing, restating, remolding, and readjusting our conceptions of the right and wrong of social and industrial relations, and our notions of the procedure by which the right is to be upheld and the wrong prevented. And with it all is the ever-present necessity of maintaining the continuity of the great current of the law that has come down to us through the centuries, swelled to an ever fuller tide by the successive judgments of the generations that have gone before, embodying their conceptions of what is right, and of the procedure by which the right is best preserved.

What lawyer, or set of lawyers, engaged in active practice, can be expected to assume the burden of such a task, with full knowledge that their compensation will be found only in the consciousness of a valuable service rendered, but not paid for? The practicing lawyer, who has the ability, the learning, and the sound judgment of affairs necessary to the accomplishment of this great work of adaptation, is sought by many clients, bearing shining fees in their hands. He naturally undertakes their business. He must keep up with the hurrying procession of lawyers that press on to leadership at the bar. Having become attorney for his clients, he cannot be false to the trust they have reposed in him. He must conduct their affairs properly, and in so doing his time and his strength are consumed. It is not reasonable to expect him to turn his back on his clients, to pause on the open road to fame and fortune, in order to take up the doubtful cause of so impersonal and ungrateful a client as Society at large. And he has not done it. We should pause here, by way of fairness, to say that lawyers as a class have no less of public spirit than other men, and to note that many honored men have made themselves exceptions to this broadly stated rule by devoting much time to the unremunerated service of the legal profession and of the public. In the small class of philanthropists of this order one naturally thinks first of the late David Dudley Field; and among the living it would be possible to mention other great lawyers who have given nobly of their time and labor in advancing the interests of the public in the better administration of the law. But such workmen are too few, and their opportunities too restricted, for the achievement of so great a labor.

But who, then, is to do this work, crying so loudly to be done? Not those lawyers in practice who have much unused time be-

cause they have few clients. The briefless barrister is justly feared as a reformer; for, though he be learned in the books of the law, if he has held himself out to serve clients, and had none, it is an adequate judgment that condemns him as being, for some reason, unfit for affairs. Then, again, who is to do this work? The answer is that the new class of lawyers just emerging into group consciousness, the law teachers in our great universities, will ultimately rise to the accomplishment of this work of adaptation, always with the ready aid given so cheerfully by lawyers engaged in active practice.

This idea will be shocking at first hearing to our brethren at the bar or on the bench, for they fear the college professor as a reformer even more than the briefless barrister. To the lawyer in practice the term "professor of law" ordinarily suggests two somewhat variant pictures: The one of a little man sitting in a large chair engaged in the occupation of causing the young men before him to regurgitate divers supposed rules of law that have been taken from some text-book and swallowed without mastication; the rest of his time being spent in the dull labor of grinding out text-books or cyclopedia articles which possess some value as collections of authorities to be rightly used by the able lawyer. The second is of a person possessing a brilliant, but erratic, mind, full of useless and obsolete legal lore, but without knowledge of the practical affairs of life, or interest in those human elements that have not less significance in the administration of law than reason and logic; one having the greatest interest in the ancient writ of *ouster le main*, but none at all in the question whether a writ of injunction may be had to free the great manufacturing corporation down the way from the line of pickets set before its gates by striking employes. It is quite true that it is possible to find individuals somewhat like these types among the teachers of law. But they are not numerous, and are fast giving place to men of a very different kind.

The profession, for the reasons heretofore stated, is becoming more and more attractive to the ablest class of young men who qualify for the bar. Already one may single out not a few who possess in a marked degree those qualifications of mind and temperament which would insure marked success at the bar. Some of these strain at the leash, and presently forsake the ranks of the teachers to seek the more exciting and lucrative life of the practitioner; but others remain because the tremendous significance of the teacher's work appeals to them, and they think more of the service to be rendered than of the pay to be received. Many of these teachers are alive to their very finger tips, and are even more interested in the live American of the twentieth century,

of the kicking variety, than in the dead feudal overlord of the fourteenth century, of the year book sort.

The nature of the work required of the present-day teacher of law, as shown above, compels him to be a student of the science of the law as a whole to an extent never possible to the lawyer in active practice. He has the opportunity to secure a perspective of the whole field of the law, an appreciation of the continuity of its principles and procedure, which, as we have seen, is absolutely essential to the successful work of adapting it to the changing needs of modern society. There is a tendency now developing, as shown above, to lessen the burden of classroom labor, so heavily laid upon him heretofore, with consequent time afforded for working at the problems presented by the present unsatisfactory state of the law. More and more there will be drawn into the teaching profession lawyers sufficiently able and possessed of that sound judgment in affairs necessary to any successful work dealing directly with human life and interests. Thus for the first time there is open to a class of lawyers able and qualified to do the work required an opportunity to gain a knowledge sufficiently broad for the task and the time necessary for careful reflection and sound construction. No one can accomplish it by himself, nor can ten; but a hundred law teachers, working at the same problem in generous emulation, over a number of years, will work out a solution.

Speaking broadly, there are three great channels through which the law teacher may make his work effective in aiding the accomplishment of this great task: First, by making use in his classroom of the opportunity to influence the students who are to be the lawyers and judges of the future; secondly, by research and publication; and, thirdly, by working directly with commissions, bar associations, and legislative committees charged with the duty of considering and recommending specific legal reforms.

Considering his work as a teacher from this point of view, it is to be observed that, while the function of the American law school is to give a working technical knowledge of the law as it has been made by the courts and the legislatures, it by no means follows that the function of the teacher is confined to imparting information concerning the rules of law, or to training men in the art of reasoning out solutions of legal problems. While information is unquestionably of the greatest value to the man who needs it, just as his tools are of the greatest value to the artisan at his work, or his weapons to the soldier on the firing line, yet the giving of information is not teaching in its wide and true sense. When we speak of the wonderful teachings of the Great Teacher of Nazareth, which trans-

formed a handful of insignificant Galilean fishermen into a group of moral and intellectual giants, capable of setting on foot a movement that should dominate a world that for generations had looked with scorn and contempt upon the truculent and disorderly people of Palestine, we do not have in mind the information He imparted to His disciples. It was the truth that He taught—those great basic principles of right and justice that tend to bring all the thoughts and acts of men into right relation the one with the other, and thus to make possible that marvelous state of affairs which we call Christian civilization. Clearly, then, the teacher of law is no true teacher unless he lays before his students and makes beautiful to their eyes those great principles of right and justice that either do underlie, or should underlie, all of our rules of law, and sends forth his students to the bar, not merely actuated by a determination to exact from the public as large a revenue as possible, but each fired with a zeal to promote justice among his fellows and to advance, as far as lies within him, the welfare of society, by making the law that is administered as nearly as may be the law that is needed.

As a further means of aiding the more rapid reduction of our complicated system of law toward simplicity and efficiency, law teachers may well publish the results of their studies of difficult and obscure principles of law, which, by reason of being misunderstood and misapplied, have worked injustice by promoting litigation. Perhaps the most striking example of a service of this kind rendered in our generation by the publication of a great and scholarly treatise is found in Mr. Wigmore's monumental work on Evidence. Among other conspicuous examples of such work one may mention the articles of Prof. Langdell and Prof. Ames, published in the Harvard Law Review, and the essays of Prof. Thayer and Judge Baldwin. There have also been published not a few clarifying monographs of greater extent that possess much value as simplifying and determining obscure rules of law, such as Prof. Gray's "Rule against Perpetuities" and "Restraints upon Alienation," and Prof. Kale's "Future Interests in Illinois."

But the most direct means of influencing the adaptation of the law will be found in the teacher's growing opportunities to bring the results of his research and constructive scholarship before law commissions and legislative committees. Already there have been many instances in which scholarly and able teachers have rendered conspicuous services of this kind. Thus the conference of commissioners on Uniform State Laws have called upon distinguished professors of law to draft codifications of the law of Sales, of Warehouse Receipts, and of Bills of Lading. Other professors of law have at the

current session of the conference presented a draft of a Partnership Act. Yet other law teachers are busily engaged in working out, in congresses and in the public journals, the vexed problem presented by our Marriage and Divorce laws. Still another group have seriously undertaken the careful consideration and reform of our criminal law, and through the Institute of Criminal Law and Criminology, and its publications, are making marked progress. Similar activities are observed in other fields of the law, and it is to be noted that in these activities the best and most learned of our teachers of law are working in harmony and mutual helpfulness with those distinguished lawyers in practice who honor themselves by engaging in this unremunerated service.

When an accounting is really made, the high reward of honor is given to those that serve the best. If the teachers of law advance courageously and unselfishly along the broad path of opportunity that now lies open before them, and render this great service which the public so loudly demands, they will deserve and receive a reward that is none the less great because unpaid, save in honor.

Discussion

H. S. Richards, *Dean of the University of Wisconsin Law School.*

The President in his address suggests a twofold function for the law teacher: First, as a teacher; second, as a legal expert. Teaching is the primary function, requiring for its perfection a natural gift, coupled with unwearying industry. As a result of his studies incident to teaching, the teacher should acquire an expert knowledge of his subject, which in time should result in treatises or monographs that are authoritative. Most of the legal treatises, which are classical in our law, have resulted in this way. Such studies should give the teacher an intimate knowledge of the merits or defects of the existing law on the particular topic, and render his opinion or suggestions with reference to changes therein of particular value to reforming bodies and legislative committees. His judgment is not warped by a retainer, which should add to the value of his candid opinion.

I have made this rather obvious statement merely to emphasize the view that the teacher should come to his standing as a legal expert, not as an end in itself, but as the incidental result of his endeavor to make himself an efficient teacher, which he can only be, in the best sense of the term, when he has mastered his subject. But efficient teaching is the keynote. A man who regards his

teaching as drudgery, to be endured for the stipend, while his energies are directed to other matters, has no business in a law faculty.

The title of expert has been lightly bestowed in these days of rapid fluctuations in social and political theory. Two introductions in public as an expert is enough apparently to give an individual the title of an expert as far as the public is concerned. That is not the happy fate of the law teacher, however. Law teaching as a profession is a comparatively new thing. The bar and the public has too long regarded law teaching as the side line of a practitioner or judge to receive the new profession with frank confidence. The profession, also, is too recent for any considerable number of law teachers to stand out conspicuously as legal experts. There are a few notable examples of law teachers who have attained reputations as legal experts, and the future is full of promise. Unfortunately the present agitation for law reform centers in questions of public law and procedure. Three-fourths of the course in a law school is occupied with courses in private law. It is absurd to expect that men whose whole study and experience has been with questions of private law can properly be regarded as experts in public law. Their opinions would be of little value in solving public law questions.

None of the law schools give comprehensive and thorough courses in the public law, and the same may be said of procedure, though in a less degree. Public law has been largely appropriated by the political science departments of the universities. The courses there given are as a rule extremely elementary, and are really courses in civil government under more ambitious titles. The president has suggested that political science professors are not in good standing with the law teachers. If that is true, it is because such courses are too pretentious, and further taught for the most part by men who have had no legal training, and therefore incapable of dealing accurately with judicial decisions. I am sanguine that we are to see more attention paid to public law in our law schools, and the men who develop them will be in a position to lend valuable aid to legislative committees.

Granting that the function of the law teacher is not only to teach, but to lend aid in public matters, the schedule of work should be so arranged that the teacher will not be compelled to do his full quota of teaching while engaged in this public service. We have recently had and are having a great deal of criticism of our judicial system, particularly that part dealing with the criminal law. The popular magazines teem with articles which are largely denunciations of conspicuous criminal cases. One would conclude that our whole judicial system had broken down and become an instrument of injustice,

instead of justice. It is impossible to sustain these conclusions, based on a slight fraction of the causes, criminal and civil, annually disposed of by our courts. No accurate information is available to show whether or not on the whole our present system is a success or failure. Every fair-minded citizen must admit that an institution or system must be judged by its work as a whole, and not by sporadic incidents and cases. Intelligent action is impossible in the present state of knowledge. It is possible to collect this information; but its sources are various, and the work of collecting it is expensive and laborious.

The law teachers, particularly those connected with state universities, can render a great service to the public by collecting and classifying the facts showing the present workings of our judicial system. In the University of Wisconsin a sum of money has been set aside for such an investigation, and a member of the faculty has been devoting a large part of his time to this work. All criminal cases for a period of ten years are being studied, to determine whether or not there are unreasonable delays in bringing a criminal charge and trying the same, as to whether causes are reversed or dismissed for purely technical reasons, not touching the merits of the case, etc. When this work is completed, we shall be in a position to say what defects, if any, exist, and be able to suggest appropriate measures to eliminate the evils in so far as they are due to the forms of procedure. Similar investigations should be made in every state. I can conceive of no greater service that the law teacher can perform for the public and the profession of the law than in throwing light on these vital problems.

Albert M. Kales, Northwestern University Law School.

I object to Mr. Vance's references to "the ultimate function," as if there was and is and is to be only one ultimate function for the law teacher. I think we may premise from the very beginning that there was an ultimate function of yesterday which may be entirely different from that which we may have to-morrow; and in my conclusion I think I may have occasion to lay more stress upon the ultimate function of to-morrow than upon that of yesterday and to-day.

It always interests me to go back to what Prof. Langdell had to say. He said that law was a science. That to him meant that you should take cases, and by the inductive method reach from them certain principles of law. So long as you had all the data, you could do this, and the process was simply one of reasoning. You consider all the data which were in all the cases, and from them you obtain your principles. Then all you had

to do was to analyze, and reason with the proper logic. But suppose you have not all your data. Suppose you have only one-tenth of it with which to do your work. Can you perform this process of induction then? Clearly, your induction in that case becomes mere speculation as to what the rule ought to be, or what the principle ought to be, and, in order to apply any scientific method to it, you must perform experiments and put your conclusion to a test afterwards, by which you can determine whether your speculation is the law or is not the law. So long as a professor in this country was dealing with the law of England, he may be said to have had all the data at his disposal in the English cases. If you will examine Prof. Langdell's work, I think you will agree with me that his constant application of logic, his constant analysis of the cases, all came from the feeling that when he had the English cases, at least those before the Judicature Acts, he had all the data, and all he had to do was to analyze them, and then reason out the conclusion. I have no quarrel with that.

But, when Prof. Ames came to look out upon the field of forty or fifty different jurisdictions which were supposed to be following the common law, he did not find the same situation. He did not find the data complete anywhere. True enough, if he could pick from here and there and everywhere, he would get a sort of complete data; but when that data was applied to any one of these many different jurisdictions it was apparent that in no jurisdiction was the data complete from which you could reason out your principles. These principles, therefore, so elaborately wrought out by a selection of cases from all over the English-speaking world, are mere speculations of what ought to be the law. As a whole they are not the law anywhere. What we have learned to call "general law" is nothing but the speculations of the law teachers who have made our casebooks as to what the law ought to be. That is all it is—their speculations from imperfect data. The result is it is necessary now, if law is a science and we are to apply to it scientific methods, that we take some step to prove those principles. It is necessary to bring them to the test—to perform some experiments with them, before we can say that they are the law.

I believe the time has come when the law teacher must perform some of those experiments which will bring these principles of so-called "general law" to the actual test of experience, and the only laboratory that I know of for bringing these things to a test is the courts. There is something of an overproduction of speculations as to what the law ought to be. Too much time is spent in the repetition of speculations already made. The time has come when it might be just as well to restrict a little those speculations and to spend some time in testing those principles

in the courts. I believe the great question now before the law teacher is whether he will be the one to bring these principles to a test in the courts, or whether he is going to put it off on his students for another generation. Will he do it himself, or will he say that the students hereafter must bring the teacher's academic speculations to the test in the courts?

Now, I have only one answer to that, and that is that it is high time the law teacher undertook to do this himself. I am not speaking about the men over forty years of age. I am not speaking about the men who have been and are the representatives of the ultimate function of yesterday, which I think was in Mr. Vance's mind. But I am speaking about the young men that Mr. Stone spoke of, who are starting out fresh from the law school at the age of 25—who are caught young, as Mr. Richards said. What about them? They have not made any casebooks, they are not making any books, and I doubt if they are going to make any. They have the analyses of their casebooks that they used from their masters. They have got their notes, or, if not, they can secure them. And when they go into the classroom what do they do? They run off what has been handed to them, and if they have no other ultimate function, they keep on pouring out those speculations, with some additions, year after year, with the result that at forty years they have atrophy rather than progress to report. Therefore I prescribe for them this work of bringing to the test of the courts these principles of the general law which they have obtained from their instructors, together with any others that they can add.

To that end I would prescribe the following as something like the ideal progress for the young law teacher of 25, who has come out of a law school with a brilliant record and is now going directly into teaching, either with or without any experience in an office with a dozen clerks. Of course, he has his course and he has his teaching. That has all been made easy for him, as I have explained. I would set him at work at once on the local law. He needs to become expert and efficient in the analysis and the statement of the local law in some principal course which he teaches. The expectation is that at the end of five years he will have produced a treatise by which the bar and the bench may judge of him in that particular jurisdiction. He is not practicing during this time. He has his hands full, I admit. He is teaching new courses, and he is doing the work of getting up the local law. At the age of thirty years he should have produced something by which the particular community may judge him. If he has not done so, then I think his career as a law teacher ought to end pretty rapidly, or else he ought to be relegated to some distant place, where he can do the least harm.

But if he is fairly successful, then he has another step to take. It is then that he begins his effort to practice law. He practices law not at all as a practitioner in the ordinary American sense. He practices law as a law teacher, who goes in for the handling of difficult legal problems. He goes in for the handling of cases, not the taking care of clients—the giving of opinions on difficult cases. That is the spirit in which he goes into his practice. If his subjects be in the torts and evidence group, why he ought to have a year off, and he ought to go into a state's attorney's office and try jury cases. Then, when he comes out of that apprenticeship and back to his law school, he should be restricted to retainers from other lawyers. He goes into his work as an expert, and naturally goes into the cases which involve the difficult problems in the subjects which he teaches. If he is in the property or in the commercial law group, of course he must use his best efforts to secure the confidence of older members of the bar, who have clients and who are willing to give the law teacher his chance—at first, of course, in a desperate case that nobody can win. At 35 years of age the law teacher ought to have made some progress toward a standing at the bar. Between 35 and 45 ought to be the great period of his life, when he begins to bring the principles of his group of courses taught him by his masters to some actual test in the courts of his state, or in the courts of other states, if his fame is great enough to enable him to get outside the narrow confines of his own jurisdiction.

That is the ideal training for the law teacher of to-morrow. His ultimate function—the ultimate function of the majority—is to bring the speculations of his masters and his own, if he has any, to the test of actual experience in the laboratory of the courts.

The Function of the American University Law School

By HARLAN F. STONE

Dean, Columbia University Law School

There has been no more striking movement in the history of education than the development of legal education in the United States in the past 50 years. Although the law demands that its practitioners possess trained powers of analysis and discrimination, and minds stored with knowledge which historically is the product of social and economic conditions running back into the Middle Ages, it is only in recent times that educational institutions as such have taken up the systematic training of candidates for ad-

mission to the bar, with the purpose of fitting them for the practice of their profession. In 1860 there were 12 law schools in the United States, and of these not more than 2 or 3, and certainly less than half, could fairly be characterized as professional schools offering courses even approximately qualifying their graduates for the practice of the profession of law. At the present time there are 114 schools of law in the United States awarding to their graduates the degree of bachelor of laws or equivalent degrees, all avowedly existing for the purpose of fitting their students to take up the practice of law. Of these, 23 are proprietary, or at least are not affiliated with any college or university, and may be suspected of the faults which experience has taught are usually incident to the proprietary professional school. The remainder, or 81, are either departments of universities or affiliated with colleges or universities.

The proprietary law school came into being as a result of the unwillingness of the university to offer professional courses in law. With the proper development of the university law school and the consequent raising of standards of admission to the bar, it is inevitable that the proprietary school will in the course of time be replaced, just as the proprietary medical schools, which owe their origin to a similar condition, have been or are being replaced, by the better equipped and more disinterested professional schools maintained by colleges and universities.

Looking toward the future, then, the problem of legal education lies in the somewhat delicate adjustment of the function of the professional school, having the educational ideals of the university, to the practical needs and aims of professional training. What is the function of the university law school? Can there be any difference of opinion with respect to its proper sphere? One has but to turn to the catalogues or bulletins of information issued by the college or university law schools in the United States to receive an affirmative answer to this question. Realizing how often in this world performance falls short of promise, one is led to believe that the diversity of views as to the proper function of the law school is even greater in the practice than in theory. Of the 81 college or university law schools in the United States, 25, or nearly one-third, maintain a two-year course, and of these 9 maintain evening schools only. In the case of a very large percentage of college or university law schools it requires only a slight knowledge of their curricula to know that their university relationship is more nominal than real, so far as any influence is exerted on their scholarship, and the writer has no hesitation in asserting that an even larger percentage serve no educational purpose beyond the preparation of their students for

the bar examinations, which in many of their respective states are notoriously lax and inefficient.

There can, of course, be no serious question in this gathering but that the university law school has a more important service to perform than the mere preparation of its students for bar examinations. But to what extent legal education should be made to conform to university standards of sound scholarship is a question to which there is no unanimous answer, even from the members of this association. Has the law school properly performed its function when it has fitted its graduates for admission to the bar and qualified them to begin their apprenticeship in law offices, or should it go further, and even at the sacrifice of immediate practical advantage bend its energies toward giving to its students sound theoretical training from the scholarly and possibly more academic point of view? A few of the law schools of the country, far too few, the writer believes, have answered this question in the affirmative; but the greater number yield in varying degrees to the ever-pressing and insistent demand for instruction which will fit the student for the bar examination, or carry him a little further along toward the completion of his law clerkship than he would have been carried by a like period of study in a lawyer's office.

In answering the question, What is the function of the university law school? it should be borne in mind that the entire history of legal education teaches us that the law school is peculiarly the place for the student to become master of the principles of law from the scholarly and theoretical point of view. It is because of this that the law school has succeeded in competition with the lawyer's office as an instrument of legal instruction. It is only in the law school that the student has opportunity for systematic investigation under competent instruction into the origin, history, nature, and application of the great body of principles which go to make up our common-law and equity systems. It is in the law school only that he can receive adequate training in those powers of analysis and discrimination in dealing with legal problems which are indispensable to the intellectual equipment of the competent lawyer. The training of the law office, even under the more favorable conditions which obtained one or two generations ago, could not compare in this respect with the advantages afforded by the efficient modern law school, and under modern conditions systematic training in legal principles in the law office is an impossibility.

But while the law office is not, and in the nature of things cannot be, a competent school of instruction for systematic training, we are bound to recognize that no law school could be better adapted than the law office to give to the young practitioner some of the

training essential to his success. No law school, for example, is as well adapted to teaching the apprentice how to prepare a case for trial, or to conduct the trial, or for teaching him how to collect and make use of evidence; and it may be doubted whether the law school, when once the first principles are mastered, can ever surpass the law office as a place in which to train students in the drawing of pleadings and the preparation of the various practice papers incidental to a litigation.

In determining the function of the law school in the university, therefore, we must frankly recognize that it can only supply the student with a part of the intellectual training and experience necessary to make him a competent practitioner. But, on the other hand, it must be remembered that the absolutely essential and vital part of his legal education, viz., sound theoretical training, can be provided only by the law school which maintains the scholarly ideals of the university. It is therefore the function and duty of the law school to bring to bear all the powers of its scholarship and all the skill of its teaching in providing such training. Its first duty and highest privilege is the stimulation and training of the student's powers of analysis and discrimination in dealing with legal problems, to the end that its graduates may possess trained legal minds, familiar with legal principles, rather than minds stored with an accumulation of rules and exceptions, or lumbered with memorized precedents.

But if the law school is to devote itself primarily to training and to the study of legal principles, is there not danger that it will become too theoretical, too academic, and thus defeat its own purpose as a vocational school? This, of course, is a very real danger, if the law school does not so control and shape its instruction as to give to its training a practical character and application.

I well remember a young man who graduated from one of our best-known law schools and began his period of clerkship in a New York law office. On being directed to look up a point of law, he returned to his employer after a couple of days and reported that he had given the matter very careful thought and consideration and as a result he had come to the conclusion that the law was thus and so. His opinion was well reasoned and theoretically sound, but unfortunately, while there was no authoritative decision on the point by our higher courts, the Supreme Court, which is the court of original jurisdiction in our state, had taken a different and diametrically opposite view of the subject, and had expressed its view in a number of available opinions, search for which our young friend had not considered important, in view of his own carefully prepared opinion, and in the absence of a decision of our higher courts. It is only fair to say that that young man with increasing experience, has become an extremely sound and capable

lawyer, and he possesses a breadth of view and an understanding of the principles of the law which he never would have acquired had his legal education been limited to cramming his mind with rules and exceptions and the latest decisions of the particular jurisdiction in which he expected to practice. But it was not fair to the young man, nor to his profession, that the law school should give him such an impractical view of the law as was indicated in his first attempt to apply its training.

A well-known law office in New York City, which selects all its clerks from the graduates of two of our well-known schools, posts the following notices in its library: The first reads: "The law of New York is determined by the courts of New York." The second reads: "You will find an authority on every point in your case, if you search for it." The members of that firm recognize the value of the theoretical training given by those schools; but the notice posted in their library shows that they realize likewise the weakness and danger of such training, unless subjected to proper influences.

The use of decided cases as the basis of all classroom discussion, now generally adopted by the law schools of the country, not only tends to accuracy and precision of thought on the part of the student, but it gives reality and the immediate practical application to the theories which they embody, and is unquestionably of great advantage in giving the legal education acquired by that method a soundness and practical character which it would not otherwise possess. But there is always danger that the decided cases may be used to prove a theory rather than test its soundness, and unfortunately support may be found for almost any theory, if the instructor is not limited as to his jurisdiction. The young man to whom I have referred was trained under the case system, and my observation leads me to believe that his case was in no way exceptional. The danger, then, that the law school which is devoting itself primarily to legal training along the lines which seem most desirable will become too academic in spirit is not removed wholly by the study of law from cases.

To avoid this danger the instructor himself, particularly in private law, must have had experience, and must have been subjected to influences which will insure his emphasizing the true relation of his instruction, however theoretical, to the law as an actually existing practical system for the administration of justice. This experience and these influences come only from having actively engaged in the actual practice of the law. It is there that the lawyer becomes familiar with the difficulties in the application of legal theories and with the practical considerations which are important, if not controlling, in determining the forms of practice and

the substantive rights of litigants. It is believed that there is no more dangerous tendency in legal education at the present time than the too common practice of calling young men just graduated from a law school to the important work of law teaching, exclusively private law subjects, before they have had actual experience in practice. In making this assertion I am not unmindful of the brilliant and successful exceptions to what I believe is the sound general rule. If it is true that the function of the law school is to approach the study of law from the theoretical and scholarly side, it is equally true that it must not become so academic as to separate itself from the profession which it represents and for the practice of which it undertakes to train its students. Yet how can this result be avoided if its teachers, or any considerable number of them, have no actual experience in its practice and have never acquired by contact its sentiments and traditions?

But can the teacher, having had experience in practice, be depended upon to approach his subject from the theoretical viewpoint? I am aware that the opinion exists among law teachers and administrators that he cannot, or at least will not, so approach it, and that the practice of the profession for any considerable period tends to destroy his capacity for what Professor Williston, in his admirable address of two years ago, called "idealism in law teaching." This is a grave charge to lay at the door of any profession, if true; but my observation leads to the conclusion that it is not true. The fact is that competent teachers of law are born, not made exclusively by training or environment. Of the thousands who prove themselves competent students or practitioners of the law, only a few can be depended upon to become successful teachers of law. Every law school administrator recognizes that success at the law is no guaranty of success in the professor's chair, not because the incumbent has been in practice, but because he does not possess the gift. This, then, does not mean that success at the law is inconsistent with successful law teaching. There are no data on which to base the conclusion that any lawyer who once possessed the gift of teaching law has lost or impaired it by engaging or continuing in practice. I have known personally too many examples of law teachers whose capacity for idealism in law teaching had been stimulated and expanded on the one hand, as well as tempered and controlled on the other, by experience in practice, to concur in any such view.

To insist as a general rule that the law teachers must qualify by a reasonable period of experience in practice seems not an unreasonable requirement, although it will undoubtedly add to the burdens and perplexities of the law school administrator.

He should, however, encourage the junior members of his teaching staff, having demonstrated capacity for law teaching to continue in practice for a period sufficient at least to give them the practicing lawyer's point of view, and to enable them to acquire a first-hand knowledge of those practical considerations which influence or control the application of legal theories. Ultimately the teachers in the law school, or most of them, should give their whole time to the work of law teaching and to promoting the interests of the law school as an educational institution. This would be the ideal condition. But, personally, rather than forego the benefit to legal education of instruction by teachers experienced in practice, I would gladly retain in a law faculty a number of practicing lawyers, provided, of course, they possessed the gift of teaching law from the theoretical point of view and devoted themselves unreservedly to the interests of the school. A faculty so constituted would, to my mind, be far preferable to one composed exclusively, or largely, of teachers without actual experience in practice, and would insure the full performance by the school so equipped of its functions as a vocational school and as an educational institution in a larger and broader sense.

It is, perhaps, a corollary of the principle that the law school should approach its subject from the scholarly and scientific side, that it should not become localized either in spirit or in the application of its teaching. It cannot be scholarly or scientific if it teaches the law with reference only to its peculiar development in the local jurisdiction, and consequently without that breadth of view and that searching inquiry which should characterize all sound professional training.

I do not desire to reopen the discussion as to the advantages and disadvantages of the purely localized law school, which has occupied the attention of this association at previous meetings, or to restate the arguments which convince me that the exposition of local law should be only incidental (although an important incident) to the larger scheme of tracing the development of legal principles from their English sources and their examination in the light of precedents which are illuminating, whatever their jurisdiction.

Whatever view may be taken of this subject, we cannot ignore the situation which actually exists. The law schools of the country have increased in such number that there is now probably not a state in the Union without one or more law schools within its bounds. A great number of them, probably the majority, must therefore necessarily be local in influence, and consequently largely controlled by local influences. The demands of expediency, the unseen and unfelt influences of environment, must make their

impression, unless those in control of the policy of these schools take a broad view of their function as educational institutions.

Even those who argue for the localized law school would, I presume, agree that it would be a calamity if the law schools in each of our states were devoting themselves to teaching the law as it exists in their own particular jurisdiction, without reference to the development of the law in other jurisdictions. Such a condition would be one of educational anarchy, disastrous alike to sound professional education and to the future development of the law in the United States. There is, of course, no likelihood that we shall reach such a condition of affairs in legal education; but that there should be a tendency in that direction seems inevitable, when one takes into account the number, location, and organization of our law schools.

It is important, therefore, for those interested in law teaching that they should be on their guard against those influences which would tend to provincialize legal education. To those teachers in large and established schools drawing their students from all sections of the country this word of warning is perhaps unnecessary; but, as I have already shown, these constitute but a small minority of the law schools of the United States. The great majority are of comparatively recent origin, and have yet to demonstrate that they deserve success in its broadest sense as educational institutions. They will merit success, and in the end will achieve and retain it, only by keeping steadfastly in view the true function of the law school as an educational institution for providing the theoretical training for a learned profession, a training which, however exacting and intensive it may be, must never be narrow, and must never leave out of account the development of the law as a whole.

Emphasis of the proper and important functions of the law school necessarily by contrast emphasizes those functions of legal training of lesser importance, or which possibly do not belong to the law school at all. Recognizing that the law school has supplanted the law office as an instrumentality for legal instruction because of its superiority in certain directions, we must also recognize that in certain other directions the law office and the courtroom are superior agencies for legal training. If, therefore, we attempt to do what the office can do better than the law school at the expense of the training which the law school can do better than the office, there is always danger of economic loss, not to say of wasted opportunities.

Some of the law schools of the country are now trying the experiment of conducting a "legal aid dispensary," in which students, as a part of their regular required work

are assigned to act as attorneys for worthy persons unable to pay the fees usually charged by attorneys. In others, a substantial part of the required work of students is the conduct of moot courts under the guidance of members of the faculty. It may be questioned whether these experiments, judged from the viewpoint of the proper function of the law school, will prove to be profitable. Three years, the usual period of law school study, if used to the best possible advantage, is none too long for the acquisition of a working knowledge of the principles of the law. No branch of study, if carried on thoroughly and scientifically, is more exacting or more absorbing. The common experience is that the student's entire working time during the three years of the law course is completely occupied in the study of the principles of the law. When he leaves the law school, his opportunity for this kind of study and training under the guidance of competent instructors is ended; but his opportunity to conduct a "legal aid dispensary" begins, and will continue during his entire professional career. Whether he avails himself of that particular kind of opportunity or not, his facilities for becoming familiar with the details of office and court practice are better than anything that the law school can possibly provide, and they will be available as long as he continues to practice his profession. How, then, can there be any question but that the "legal aid dispensary" and the moot court, when they displace any substantial part of the curriculum dealing scientifically with legal principles or with legal theories, cost more than they are worth?

The wise law school administrator will advise his students to secure their office and court experience in vacation time and after the completion of the law course, and will encourage his students to organize and conduct their own moot courts, with the assistance of members of the faculty and practicing members of the bar, whose assistance is usually gladly given. Thus organized, the legal aid dispensary feature of the curriculum is subordinated, as it should be, to the main business of the law school, which is sound theoretical training by competent instructors of practical experience.

Although law has been taught and studied more assiduously here than in any other country, this country has been singularly unproductive of a meritorious legal literature. A few treatises which have become standard were written early in the last century. A series of monographs of importance, written by university law professors, have appeared in law school publications and legal periodicals, and a few excellent treatises on special subjects, also by university professors, have appeared of late; but by far the greater number of law books now appearing are

little more than digests of decided cases. It is believed that the unsatisfactory character of these publications is due to two causes: The great demand for the scientifically trained law graduates for professional work and their very rapid success have drawn the most proficient into practice and away from productive literary effort. In the second place, the law school itself has done very little to encourage the production of a higher type of legal literature.

Although the training of students for professional work must always be the chief function of the law school, the law school in the university should provide a broader education than is absolutely necessary to meet professional requirements, and it should train at least a few legal scholars and writers. It would undoubtedly be unwise to encourage any considerable number of students intending to practice law to prolong their legal studies beyond the generally adopted three-year period. On the other hand, the more limited number of students who may be interested in legal research, or desire to carry on special work which may result in the production of a worthier legal literature, should be afforded opportunity so to do by the university law school. The award of an advanced or higher degree by several law schools in the country indicates a tendency to recognize this function of the law school. In laying out any such program of study, it is important that it should follow, and not parallel, the professional law courses. This is essential, not only to secure the proper preliminary training for the advanced student, but that the professional course, as such, should not be impaired by carrying on in conjunction with it courses devised for other purposes, and leading to a different and possibly more high-sounding degree.

Moreover, such a course should be something more than a continuation of the professional law course during a fourth year or longer period. The law student, having attended lectures and acquired the training of the professional law school for three years, is presumably qualified to conduct an investigation in a legal subject outside the classroom. The amount of formal classroom work should therefore be reduced during the fourth year, and the student should be required to carry on an investigation along special lines under the guidance of the professor. He should be encouraged to productive effort by the requirement of a thesis or dissertation, which might even be prepared at the close of the fourth or during the following year of his course. These suggestions are intended to indicate in a general way only the lines along which such an advanced course in law should be developed, if the experiment is to be justified by its results in productive scholarship.

Another function of the university law school is suggested by the very disturbing increase in the number of cases of unprofessional conduct by members of the bar. Without at this time attempting to analyze the statistics relating to this unpleasant subject, it may be said that the very large and increasing number of such cases is a subject of serious concern to the bench and bar of the country, and may well invite the attention of those whose duty it is to guide the young lawyer at the very outset of his career. Nor can we, as law school instructors, wholly disclaim responsibility. Every law school, unfortunately, has its graduates among those found, or deserving to be found, unworthy members of the profession. Doubtless this condition is due to complex causes, but I am convinced that among them will be found the fact that the great majority of the profession go directly to the bar from the law school, and the law school has signally failed to transmit to its students as a class the professional ideals and traditions which were formerly acquired by the law clerk as a matter of course during his apprenticeship. The greater number of cases of professional misconduct, excepting, of course, those of the grosser or criminal type, are the direct result of ignorance, or an imperfect notion of the nature and extent of the obligations of the lawyer. So long as the law student is permitted to go directly to the bar on graduation from the law school, it is clearly incumbent on the law school to see to it that he goes with some definite knowledge of the nature of his obligations as a lawyer and it ought to do what may be done to give him definite professional ideals. Fidelity to professional ideals cannot, of course, be inculcated by instruction. The problem is, therefore, in the main, not so much one of intellectual training, as it is of judicious stimulation of the student's interest in professional ideals and traditions. The best method of bringing this about will, of course, depend upon local conditions. Whatever stimulates independent thought and discussion in the student community should be relied upon to stimulate thought and discussion upon this subject. Formal lectures or instruction in legal ethics is of doubtful efficacy. Occasional informal addresses by members of the bar or members of the faculty having a bearing on professional conduct will be found to be helpful.

My own belief is that, in addition to other efforts in this direction, every law school should require its graduating class to attend at least three or four lectures or informal talks to be given by members of its faculty, in which they should be informed in some detail as to the nature of the lawyer's obligations to the court and to his fellow members of the bar, as well as to his client, and in which there should be pointed out to the young lawyer those practices

more or less prevalent at the bar which he would do well to avoid.

Whatever the method adopted, the important point is that the subject is one on which the law schools of the country ought to bestow more consideration than they are bestowing at present. Like many other problems, this particular one may be expected to solve itself, when once it becomes the subject of discussion; but I am firmly convinced that the law schools of the country, by giving to this subject the attention which it reasonably deserves, can do more to elevate the tone of the bar than can be accomplished by the courts and the combined efforts of the bar associations, city, county, state, and national.

To teach law as a science rather than as an instrumentality of a money-making trade; to teach it from its theoretical side by teachers experienced in practice; to encourage legal research and the production of legal literature; and, finally, to stimulate in the student knowledge of, and respect for, the professional obligations of the lawyer—are at once the high privilege and duty of the law schools of this country. The rapid increase in the number of law schools and the ever-present demand for some royal road to legal learning, provided always it be speedy and easily traveled, make it difficult, and perhaps impossible, for all to attain to these requirements. Indeed, perhaps the most serious hindrance to the progress of legal education in the past decade has been the rapid increase in the number of law schools, resulting in the assumption by new and weak institutions of educational burdens and responsibilities which could have been better carried by the old and strong. Economically the doing by two institutions of what could be better done by one is wasteful, and inevitably results for a period, whatever the final outcome, in a lowering of standards and a loss of efficiency. There is no pressing demand for an increase in the number of lawyers, or for stimulating unduly the activity in pressing for admission to our law schools. Rather than an increase in number of law schools, the country has been, and still is, in need of higher standards of legal education, and some effective action by our law schools to dissuade the unfit, both morally and intellectually, from entering the profession at all. It is, of course, difficult to bring this about with a multitude of new law schools striving for students and stimulating the desire to enter an already crowded profession. As members of that profession, and as teachers on whom rests a large responsibility toward our profession, we should unite in the effort to bring the law schools of the country more into harmony with university ideals and standards of scholarship, to the end that the system of legal education which is in the process of establishment in this country may be in all

respects worthy of the regard and respect alike of lay educators and the members of the bar who have at heart the dignity and true worth of their profession.

Discussion

Dudley O. McGovney, *Professor of Law, Tulane University of Louisiana.*

It has seemed to me that there has long been a consensus of opinion among progressive law teachers that the function of the university law school is to ground its students thoroughly in the fundamental principles of the law, and how can this be done if it is not taught in a scholarly fashion, if the student is not caused to study it in a thorough-going manner—that is to say, in a scholarly manner? Scholarship in history, in science, in any branch of knowledge, is merely thoroughness of research, pursued with methods appropriate to that branch of knowledge.

The law is a system of rules evolved by society and evolving with the alteration of society. The rules are not hard and fast and clear-cut, for they are rules applied and to be applied to the facts of real life, facts varying both apparently and actually. Our knowledge of these rules tends to become static. The rules themselves seldom do. Almost every rule has a future growth, as well as a past development. A most valuable phase of legal lore to be imparted to a student of any rule of law is its dynamic force. What is the trend of its development? What is the law of the future? The future, of course, is always beginning with the coming moment.

The scope and trend of a rule of law is only felt by a mind versed in its history, in the reason under it, or advanced for it, the soundness of that reason, the character and breadth of the reception the rule has received in recent times, and the state of modern criticism of the reasoning that formulated the rule. It is to the judicial decisions, past and present, that we look for the first-hand, the source, literature on all of these points. Of necessity the student must go to the early cases and to the late; and it seems to me that our so-called national law schools, once called here schools of comparative law, find a chief reason for using the literature of many jurisdictions in this: That the trend of a rule in one jurisdiction affects its trend in another; the criticisms of one court weigh with another. What is the law of one jurisdiction to-day may be the law of many others to-morrow.

It has seemed to most of us that the very

nature of the subject-matter that we teach demands scholarship, and scholarship of the highest university type. Certainly this view has prevailed with members of this association, though there have always been and remain differences as to the methods of instruction best adapted to the purpose; and no doubt, too, there are faculties under the control of minds less suited on account of their educational experience to grasp the full meaning of the ideal they profess to follow.

I certainly agree with all that the learned speaker has said in commendation of the scholarly teaching and study of the law. When the speaker came to treat of the recognized danger of a too theoretical teaching of law, and of the elements of the law school wherein this danger lurks, I could not follow with him with the same approval. It seemed to me that the one example of impractical instruction he gave, viz., the young man who came to practice in New York without knowing where to find the most authoritative literature on the subject, was an example of an omission from the curriculum rather than a too theoretical instruction on the part of one or more of his instructors, and yet the gravamen of the danger was alleged to lie in the educational qualification of the individual teacher, and we were especially warned against taking into our faculties any teachers who were not experienced in the practice of law.

The fault was in the curriculum, in the determination of which the whole faculty has a voice, in most of our schools, at least, in an advisory capacity. The fault was an omission from the total subject-matter given out by the faculty as a whole, which should not have existed, even if there were in that faculty one or two teachers who taught their particular quota of that subject-matter in a too theoretical manner.

That a student should graduate from one of our best-known law schools lacking in such commonplace information is truly astonishing. There is not a "closet" teacher or practicing teacher in the country who would not have explained to him that the decisions of the highest courts of New York were controlling there, and final, subject to the exceptions to the rule of stare decisis, had that teacher had exclusive charge of his instruction. As a sole preceptor, he would have imparted that information the first day. There was probably lacking in that school at that time a short set of introductory lectures on the nature and sources of law, the function of the courts, and the relation of the jurisdictions that is doubtless now supplied. Such an introduction is especially necessary in what we term here national law schools, or schools of comparative law, for want of a better name. I prefer to think of them as schools which give a composite picture of the systems of

law of many jurisdictions, systems essentially and in the main the same, with peculiarities that are blurred and dim in the edge of the composite photograph. Mainly we deal with the solid and clear portions of the picture, leaving the dimmer areas to the easy exploration of the trained mind of the graduate.

Perhaps the brief lectures referred to might not prove sufficient. Perhaps in such schools it would be well to require each student to write briefs on points in the law of the jurisdiction in which he is to practice—points of some complexity, on which a variety of positions are taken in different jurisdictions, as, for example, a problem involving the right of the beneficiary of a contract to sue upon it. Such briefing would compel the student to familiarize himself with the statutes and search-books of his jurisdiction. A slight trial of this plan has shown it effective.

The example under discussion serves to warn us that defective legal education resulting from defects in the curriculum should not be charged against any particular mode of instruction, or against a portion of the faculty having a particular type of education. Our faculties are usually made up of men of various types. If matters more practical in character, matters more apt to be known to the practicing professors, or to the teachers who have engaged in practice, are lacking in the curriculum, perhaps the omission is chargeable to *their* lack of attention to the work of the school as a whole. Examples are not wanting of most admirably equipped teachers, especially practicing members of the faculty, who do not, to borrow the phrase of the principal speaker, "devote themselves unreservedly to the interests of the school."

Let us suppose that the total subject-matter taught is properly selected and coordinated, and distributed among the teachers, each his quota. Here begins the possibility of individual blame for too theoretical presentation or too theoretical teaching. The speaker has much emphasized the necessity of the teacher's having had experience in practice. It seems to me that he is too sweeping when he demands it for the whole field of private law. He agrees that there is much of practice that should be left for the student to acquire in the office. He says: "No law school, for example, is as well adapted [as the law office] to teaching the apprentice how to prepare a case for trial, or to conduct the trial, or for teaching him how to collect and make use of evidence; and it may be doubted," he says, "whether the law school, when once the first principles are mastered, can ever surpass the law office as a place in which to train students in the drawing of pleadings and the preparation of the various practice papers incidental to a litigation." This view, that there are many matters of practice that the law school

should not undertake, that should be left to be acquired by the student in an office apprenticeship, seems clearly right.

It seems to me that a great deal of time is wasted in many schools, or spent with disproportionate results, in these matters. Doubtless we shall come in time to accept the recommendation of the Section on Legal Education of the American Bar Association that one year's apprenticeship in an office after three years in a law school be required of all candidates for admission to the bar. It is not for these matters of practice that the teachers must have engaged in practice to acquire, according to the view presented, because these are largely omitted from the curriculum. Had the learned speaker insisted upon the requirement in question for the teacher of such matters of practice as the school does present for the teacher of any portion of procedural law, I could quite agree with him. But he includes the whole field of private law, including the substantive law. He would certainly admit that a clear, sound mind, equipped with the analytical faculty, and animated with the true student spirit, could acquire a scholarly knowledge of the substantive law, without engaging in practice. The danger seems to be that this knowledge will be handed on to the student in an overrefined or too theoretical manner.

Now I can conceive of a temperament too philosophical to keep constantly in mind that law is a system of rules made by custom, courts, and legislatures, subject to re-statement, but not subject to alteration to suit the philosopher's principles of ethics or love of logic. I can conceive of the too philosophical mind departing from the law as it is to an abstract system that he deems more desirable, with the result that he fails to teach the law in a scholarly fashion, for he does not teach the law at all. The defect of such teachers, if such there be, is one not of education, but one of temperament. I do not believe that such a mind would necessarily be improved for law teaching by years of practice at the bar. The law teacher must be a man of practical imagination, a man mentally in touch with daily affairs; but it seems to me that the practice of law is not a necessary qualification for the teaching of most of the branches of substantive law, for it is not the sole method of keeping one's feet on the ground. In fact, examples are not wanting of well-trained practicing professors who have enjoyed the hour in the classroom as one in which they might give some flight to their views of what the law ought to be, and push logic to its extreme, untroubled by the restraints of court and legislatures.

For procedural law, as a general rule, wide and successful practice seems an absolute requisite, and it would seem that the teacher of procedure and practice should

continue in practice as the best means of keeping in close touch with his phase of the law. Yet when one considers the success achieved by a few nonpractitioners even in some branches of procedural law, generalization is seen to be quite fallible. Take the law of simple contracts, or of torts: Wherein does the practitioner's experience improve his ability to impart these branches of law to students over the teacher who pursues the quasi science of substantive law in his closet, it is true, but having in his mind the concrete and the actual? The lawyer has in his own individual practice but few cases compared with those he and the closet student have before them in the books. Certainly, if the closet professor lacks practical-mindedness, he fails. Is it not all a matter of temperament?

It seems to me that there is a confusion here between a practical knowledge of substantive law and a knowledge of the practice of law. It seems to me that the branches of substantive law are branches of a quasi science, which may be acquired by scholarly research and taught in a scholarly and practical manner by a sane and scholarly student, though he may not have engaged in practice, and that if he has acquired poise and experience in practical affairs, and is mature when he graduates, it would be a waste of time to engage in practice, provided it is his intention to confine his life study to some portion of substantive law.

I am very much afraid that the preference shown in the address to the practitioner and even to the teacher who continues in practice may be harmful in some localities, where practitioners with the appropriate educational experience are still difficult to find. I have gone further to criticize the view advanced as extreme even for more favored localities.

Of course, no one would understand me to advocate that mere graduation from a good law school is a sufficient qualification for teaching law. In the main the schools have selected men of maturity, of broad general education, and of more than the usual experience in business or in the art of teaching—an art they have often acquired in teaching other subject-matter; but it must be remembered that principles of pedagogy are fundamental and universal, applicable to law as to other branches of knowledge, though often ignored in the law school.

I am conscious that I have commented only upon fragments of the very able address of the principal speaker. It would be useless to add weightless approval to so much that he has forcefully said. It has given me personal displeasure to find myself differing from him on some of the points I have discussed; but, feeling that it is the object of our meetings to hear as nearly as may be all sides of a question, I have felt it my duty to express myself.

The Teaching of Jurisprudence in Japan

By *BARON UCHIDA*
Japanese Ambassador to the United States

It was little more than a year ago that Prof. Vance first came to Washington to invite me to address your Association on the subject of Legal Education in Japan. The invitation gave me pleasure, for I have always felt that a part of that mutual understanding which it is so desirable should subsist between nations must necessarily be a knowledge of each other's legal institutions. Yet I could not but feel a certain lack of qualification to speak on the subject before an audience so learned and distinguished as this was certain to be, because it had been twenty-four years since I was graduated, as a student of Political Science and Public Law, from the Imperial University of Tokio, and twenty-four years is long enough to give one a suspicion that he might be slightly alienated from his subject.

I suggested to Prof. Vance that I be allowed time to prepare myself with information as to the later advances of legal education in my country, a suggestion to which he kindly acceded. For that information I then repaired to my earliest preceptor in law, to-day the most eminent jurist in Japan—Dr. Nobushige Hozumi. Thanks to his ever kindly interest in his old pupils, Dr. Hozumi readily responded to my appeal. It is with less diffidence, therefore, that I am able to-day to appear before you for an address the materials for which I owe in the main to the authority of this learned scholar of Japan.

I. Legal Education in Early Times

Let us begin by broadly blocking out the periods into which the evolution of law in Japan divides itself. There would be, naturally, three:

First, from the foundation of the Empire to the introduction of Chinese civilization;

Second, from that moment to the introduction of Western civilization; and

Third, from that moment to the present.

The first period was, and may be called, the period of unwritten law. During this stage, the people were governed by clan customs and oral traditions. In a society so governed, there could, of course, be no systematic study or education in law. In some societies, indeed, the germ of legal education is found in the practice of memorizing the words of old men and handing down the traditional account of customs. But in Japan remains no trace of this, though the practice of reciting memorized historical stories can be traced.

Only with the introduction of Chinese cul-

ture, therefore, can the history of legal education be said to begin. In the great social reformation of the Taikwa era, in the years 645-649 of the Christian era, laws were framed and institutions were founded modeled largely on those of the Ton dynasty of China. It is interesting to note that as early as the year 671 A. D. a code of laws (it was called Omi-ryo) was framed, though not published.

Eighteen years later was promulgated the code compiled by the Emperor Temmu in 22 Books of Laws called Ryo. Finally, the celebrated Taiho code was promulgated, in the year 702 A. D. The Taiho code consisted of 17 books, 11 of which, called the Ryo, included all statutes of public and civil character, while in the remaining 6, call the Ritsus, was contained the criminal law. In the year 710 this code was amended, and the Ryo and Ritsus were made to consist of 10 books each.

The publication of these and other codes during this epoch gave rise to the necessity of interpretation, and, to this end, to the education of interpreters—professional jurists. Here began actual legal education. Its first form was in the shape of an enlargement of the University Bureau which formed part of the governmental Department of Ceremony. This bureau, which already had sections of Philosophy, History, and Mathematics, now added a section of Jurisprudence. Its preceptors were two Masters, or Doctors, of Law (Myoho-Hakase or Ritsugaku-Hakase), whose official duties were to interpret the codes and give opinions on legal matters, as well as to instruct and examine law students; the object of the instruction and examination being to train up official interpreters of the law.

This office of legal interpreter gradually tended, like other offices, to take on an hereditary character, and by the year 1100 A. D. it had become a perquisite of the families Nakahara and Sakanouye, so continuing for several hundred years.

Under such conditions, real instruction in jurisprudence died out, the more so because now the land was torn by frequent civil wars, following the establishment of the feudal system under the military government of the Shogun.

At the end of the sixteenth century, the Tokugawa family raised the Shogunate to unexampled power and brought the country to order, in which it continued for nearly 300 years—a time productive in new legislation and codification. One of the most noteworthy was the famous criminal code known as Kyakkajo, or "The Hundred Articles."

Yet it cannot be said that legal education revived during this period. It was the policy of the Tokugawa government to keep most of the laws, especially the criminal statutes, in strict secrecy. They existed only in rare manuscripts, were allowed neither to be

printed nor published, and none but judges and officials were allowed to read them, or the records of precedents built upon them. The Criminal Code carries at its end the following injunction:

"The above rules have been established with His Highness' gracious sanction, and nobody except the magistrates shall be allowed to peruse them."

The Chinese did not entertain the idea that publication was essential to the validity of law. There is a famous Chinese maxim, "Let people abide by the law, but not be apprised of it," or, as some understand it, "People can be made to obey, but cannot be made to know." The Tokugawa Shoguns adopted the doctrine, so that they might rule the people in a state of ignorance. It is hardly necessary to say that legal education would not flourish under such conditions.

II. Legal Education Since the Restoration

We come now to the gigantic changes wrought by the influx of thought from the Western world. It would be a waste of time even to outline, before such an audience as this, the far-reaching social transformation which Japan began to undergo half a century since. It is enough to say that the abolition of the feudal system, the Restoration of the Imperial Government, and the grafting of the Western culture upon Japan's ancient institutions could not wait upon the raising up in Japan of a class of educated legal minds. The drafts of the new laws immediately made necessary by rapidly changing conditions were made chiefly by French and German jurists. The changes were so sudden and complete that legislation of the most sweeping character was necessary to keep pace with them. Wholesale advantage was therefore taken of the codes of other nations. And yet, from the very beginning, a new education in law went hand in hand with the adoption of new laws.

A chief part in this new education was taken by what is now the Imperial University of Tokio, and at this point I may as well take a few moments in which to sketch the origin of this institution:

During the Tokugawa period, the country, as every one knows, was closed; the only intercourse with the rest of the world being through the few Dutch who were permitted to live on the little isolated island of Deshima in the harbor of Nagasaki. Inquiries made early in the eighteenth century by Arai Hakuseki concerning Holland and Rome gave rise to the introduction of some fragments of Western learning—medicine and astronomy especially. In 1744 an observatory was set up. In 1811 a Translation Bureau was established in connection with the observatory. In 1856 this bureau was given an independent existence, under the style "The Institute for the Study of Foreign Books,"

and it was now directed to translate Dutch books and to teach the Dutch language. Later, work was done in English, French, German, and Russian.

This may be said to have been the germ from which sprang the Imperial University. The Institute was closed for a time in 1868 during the civil war which attended the Restoration. After that event, the University (the Daigaku) was established, and the Institute for the Study of Foreign Books reopened as the South College (Daigaku-Nanko), being now devoted to the study of the English, French and German languages.

Upon the founding of the University, a programme of instruction was determined, and it included a course in law. But it was not till 1874 that instruction in law was actually begun, the previous five years having been devoted to preparatory instruction. The teaching of law was carried on in English, and the first teachers were Americans, though there were also Japanese teachers who imparted instruction in the old Japanese and Chinese law. It is of interest to note in passing that Marquis Komura, the present Foreign Minister, was one of the nine students who first received instruction in English law in the new University.

At the close of the first year of instruction, three students were selected from the first class to be sent to the United States to continue and complete their studies. They were Komura and Kokuchi (now an advocate and a member of the House of Peers), who studied in the Harvard Law School, and Hatoyama (now an advocate and a member of the House of Representatives), who studied at Columbia College.

The following year, three students were sent to England: Okamura, Sagisaka, and Hozumi, whom I mentioned in beginning this address. These three entered the Inns of Court and studied at the Middle Temple. After being called to the English bar, Sagisaka was sent to Belgium, and Hozumi to Germany, to pursue still further legal studies in those countries.

In every year since, a certain number of law students, on graduating from the home University, have been sent to America or Europe to carry on these studies, and most of these men on returning home become members of the teaching staff in the Law Faculty either of the Imperial University or some other school.

Let it be recalled that the legal course in the Imperial University was in English law. Now, side by side with this, there grew up a School of French Law, conducted as a section of the Department of Justice. It was opened in 1874—the year in which, as we have seen, the English Law School of the University opened. Instruction was under the direction of Professor Boissonade and another French jurist; and in 1875, the year when the University began sending law stu-

dents to America, the Department of Justice school began sending students to France. The existence of these two schools of law—one English and the other French—had, we shall see, an important effect on the future legal history of Japan.

In 1885 the French Law School was incorporated with the University.

In 1887 a German Law Section was established. Thus there was built up in the University a Law Department, consisting of three sections, each devoted to the law of a Western nation, besides a fourth section—that of Political Science, which had been transferred from the Literary Department in 1885. To these were recently added a fifth and a sixth section, namely, of Economics and Commerce. By Imperial ordinance in 1886 the course of law was fixed at three years; in 1892 it was extended to four years.

The year 1897 saw the founding of another Imperial University, at Kyoto, by Imperial ordinance of June 18. Instruction in law was begun here in 1899. The Kyoto University College of Law is divided into the two sections of Law and Politics; the Law Section being subdivided into three branches of English, French, and German law—as at Tokio. There are no foreign professors in the Imperial University of Kyoto, but most of the faculty are graduates of the Imperial University of Tokio who have studied abroad.

Besides the two Imperial Universities, there are in Japan eight law schools of private establishment. You may be interested to hear their names:

Hosei Daigaku, founded in 1879;
Meiji Daigaku, founded in 1881;
Waseda Daigaku, founded in 1882;
Chiuo Daigaku, founded in 1883;
Kwansei Daigaku (Osaka), founded in 1886;
Kelo Daigaku, founded in 1897;
Nippon Daigaku, founded in 1897;
Kyoto Hosei Daigaku, founded in 1900.

III. Admission to Law Schools

You will want to know something of the courses of study pursued in Japanese schools of law, but, first, I should speak of the qualifications for admission.

The admission requirements insisted on by the Imperial University are higher than those of the law schools of private establishment. For admission to the University Law School candidates must have passed through the six years' course of the Primary School, the five years' course of the Middle School, and the preparatory course of three years in the High School. But for admission to the private law schools it is necessary only to have graduated from the Middle School or to have completed a year and a half more of preparatory study. So that there is a difference, in some cases of a year and a half, in other cases of three years, in the quali-

cations of the Imperial University matriculants and others. Besides, the candidates for admission to the Law College of the Imperial Universities must have passed examinations in two European languages; in some private law schools this is not required.

Nevertheless the desire of Japanese students to enter the Imperial Universities is so great that applicants for admission to the preparatory course of the High Schools—of which there are at present eight—annually exceed the capacity of those schools by many hundreds. Only one-third of the applicants win admission through competitive examination. Last year the candidates for admission to the Law College of Tokio Imperial University numbered 590, and it was necessary to reject the 90 who showed on examination comparative deficiency in any one of the three languages, English, French, or German. The popularity of the Imperial University among young men may be explained when we come to speak of the careers of that school's graduates. Last year the undergraduate law students of the Tokio Imperial University at the end of the academic year numbered 2,128, besides 432 taking post-graduate courses.

IV. Courses of Instruction

Courses of instruction differ somewhat in the different schools, but I will take that of the Imperial University of Tokio. Here subjects for lectures and examinations fall into the two classes, Compulsory and Elective.

Compulsory subjects are:

The Constitution;
The Civil Code;
The Commercial Code;
The Code of Civil Procedure;
The Criminal Code;
The Code of Criminal Procedure;
Administrative Law;
Public International Law;
Private International Law;
The History of Legal Institutions;
Jurisprudence;
Roman Law;
English, French, or German Law;
Political Economy.

Elective subjects are:

The Comparative History of Legal Institutions;
The Law of Bankruptcy;
The Science of Public Law;
Maritime Law.

The course extends over four years; in the law schools of private establishment the course covers only three years. At the end of each year the student is examined in writing on the work of the year. After having passed four such examinations, he is required to present himself for a graduation

examination, in which he is catechised orally on all the subjects studied during the four years' course.

V. Graduates—Privileges and Careers

It is now more than thirty-six years since the special course of law was founded in the Imperial University, and the number of graduates now exceeds 3,000.

A graduate of the Imperial University College of Law receives the title "Hogakushi," corresponding to "Bachelor of Law." A post-graduate course leads to the degree of "Hogaku-hakushi," or "Doctor of Law." Graduates of the Imperial Universities' Law Colleges are accorded certain privileges and advantages, among which are these:

(1) They may be appointed "Hannin," or "Lower Officials," without civil service examination.

(2) They may become candidates for civil service examination for the rank of "Higher Official," without first passing the preliminary examinations required of other candidates.

(3) They may be appointed assessors or candidate judges without examination.

(4) They may become advocates and practice at the bar without taking the bar examinations.

Enjoying such advantages as these, and having received the highest type of instruction in the highest seat of learning in the land, the graduates of the Imperial University naturally form a most influential class. Many of their number have already been called to most important positions. Here is a list, made at the end of the last academic year, showing the occupations of these graduates so far as is known:

Judges and prosecutors.....	544
Administrative officials.....	721
Members of Imperial Household.....	3
Professors and teachers.....	68
Members of the Imperial Diet.....	22
Advocates	194
Bankers and members of commercial corporations	453
In the service of foreign governments.....	33
In business	264
In post-graduate course.....	432
Studying abroad	9
Studying in another college.....	1
Dead	178
Unknown	475

To give an idea of the positions which these graduates are filling, I may mention such facts as that two became Cabinet Ministers; that the present vice ministers of the Departments of the Imperial Household, Foreign Affairs, Home Affairs, the Treasury, Justice, and Education, all are graduates; that the majority of the members of Japan's diplomatic service are graduates, among them four ambassadors and four ministers; and that nearly half of the governors of provinces are graduates of the Law College of the Imperial University.

VI. Legal Education and Legislation

And now to take a glance at some of the wider influences of legal education in Japan. In every land legal education and legislation stand in mutual relations of cause and effect. Education in the principles of law naturally influences legislation, yet it often happens that the system of legal education is based on and follows the footsteps of the country's legislation.

Especially will the latter be the case when a sudden and sweeping social and political revolution has to crystallize itself in a new body of law. The law will, as it were, spring into being, and education in it will for a while be less the search for creative juridical principles than the study of how to interpret and apply aright the principles which have been suddenly embraced. In the first years following such a revolution, legal education will cease to instruct the lawmakers what they should do, and will apply itself to learn what the lawmakers have done.

This is exemplified in the legal history of Japan. The promulgation of the old Taiho code of 702 A. D. was the result of such a social and political revolution, following the introduction of Chinese culture into Japan. That code was framed upon Chinese law. It was not the product of native legal education; indeed, it was the necessity of interpreting and applying the new code that brought about the beginning of legal education—in the University Bureau of the Department of Ceremony.

With even greater force does the above remark apply to the development of legal education in Japan following the opening of the country to the Western culture. The new body of legislation that suddenly appeared upon the Restoration of the Imperial Government was not the creation of, but became the subject of study of, Japanese jurists.

However, so rapidly did legal education progress—and I may say, so broad was the outlook of the pioneers of the new jurisprudence, so zealous was their search throughout the world for just principle and sound practice—that it was not long before a new school of native jurists realized their own competency to make laws for their country. The Criminal Code and the Code of Criminal Procedure of 1880, framed by Professor Bolssonade, has been entirely revised by Japanese jurists. Professor Bolssonade's Civil Code of 1890, and the Commercial Code of 1890 by Professor Von Roesler, a German jurist, were completely revised before they went into operation.

In the work of these revisions, our jurists gathered and collated materials from all countries of the civilized world. The framers of the Civil Code of 1896 and 1898, for instance, collected more than 30 of the world's civil codes, besides great masses of statutes, reports, and treaties out of which they se-

lected the principles and rules of practice and procedure which they deemed best adapted to the peculiar requirements of Japan. In some parts, for instance, rules were adapted from the French Civil Code; in others the principles of the English common law were followed: in others again such laws as the Swiss Code of Obligation of 1881, the new Spanish Civil Code of 1889, the Property Code of Montenegro, the principles of the Indian Succession and Contract Acts, of the Civil Codes of Louisiana, Lower Canada, or the South American Republics, and the draft Civil Code of New York were consulted, the first and second drafts of the new German Civil Code furnishing especially valuable material. The revision of the Commercial Code of 1899, the Code of Criminal Procedure of 1890, and the new Criminal Code of 1907, proceeded on the same method, so that the new Japanese codes may be said to be fruits of comparative jurisprudence.

Now, such being the character of Japanese law, it is clear that its study and teaching must proceed on the comparative method. This method of framing the codes has a determining influence on the method of legal education in Japan. So, although Japanese law is now made the basis of instruction, the tripartite division into English, French, and German sections is still maintained, and in each section English, French, and German law is taught in addition to Japanese law. According to my information, the English section in the Imperial University of Tokio is taught by Professor Terry, formerly of the faculty of Yale; the French section by Professor Bridel, professor in the University of Geneva; and the German section by Dr. Loenholm, a German judge.

VII. The "Postponement Campaign"

I can hardly close this address without tracing a little further the mutual relations of legislation and legal education in Japan, nor, particularly, without a reference to an incident, somewhat entertaining perhaps, and certainly not without real interest to students of the history of law.

I have spoken of the fact that study of the law must often follow the footsteps of the lawmakers. Now we come to the other side. Legislation is often determined by the character of a country's law schools.

We saw the rise in Japan of two schools of law—one, in the Imperial University of Tokio, English; the other, in the Department of Justice, French. I did not mention it, but in fact there were also two private schools of English law (Hogaku-in and Tokio Senmon Gakko), and two private schools in which French law was taught (Meiji Horitsu Gakko and Wafutsu Horitsu Gakko). Later, a German Law Section came into existence in the University.

This state of things could not, and did not,

fail to produce an interesting effect on the country's legal history. The graduates of the English Law Section of the Imperial University and other schools where the English principles were studied imbibed the doctrines of Bentham, Austin, and Maine, and most of them adhered to the school of Positive Law, while the graduates of the French Section and the other French schools held the tenets of the believers in Natural Law. It was inevitable that doctrines with which the students had been impressed at school should strongly influence their views as to legislation in later days. And thus arose among the jurists, lawyers, and legislators of Japan two contending schools.

The contest came in 1890 on the question of accepting or postponing for revision the Civil and Commercial Codes, the former of which was prepared by Professor Boissonade, who, as I have said, taught French law in the Department of Justice. By this date there was a large number of graduates both of government and private law schools who had already filled important positions at the bar and on the bench, as well as in other prominent capacities.

Many causes conspired to render pressingly necessary comprehensive legislation and radical reforms of law. The new conditions consequent on the opening of the country to foreign intercourse after centuries of isolation; the abolition of the feudal system, and the resultant necessity of centralization; the desire to abolish the extraterritorial jurisdiction wielded on Japanese soil by foreign powers—a thousand things made imperative the swift preparation of new codes of law. A Criminal Code and a Code of Criminal Procedure were promulgated in 1880, and a Revised Code of Criminal Procedure and a Code of Civil Procedure ten years later, all of which went into operation without much opposition. But when the question came on the going into effect of the Civil and Commercial Codes of 1890, especially of the former, the jurists who had studied English law in the Imperial University or in England or America raised their voices demanding that the date fixed for their going into operation should be postponed, with a view to their complete revision. Those jurists, on the other hand, whose training had been in French law, rallied to the support of the attacked codes, urged the imperative necessity of swift action, and insisted on the date originally appointed. The German section men, then few in number, were divided.

To outsiders, this "Postponement Campaign," as it is known, may seem like a mere sectarian campaign between the English and French groups of Japanese lawyers. In truth it ought to be eminently interesting to scientific observers of legal history, for it was really a contest of the Historical School of Law, represented by the English-trained lawyers, with the French School of Natural Law. It resembled in many respects the fa-

mous controversy between Savigny and Thibaut, in the beginning of the same century, over the necessity of a general civil code for Germany. The question involved the important issue as to which theory of law should dominate the future legislation and jurisprudence of the country.

The "Postponement Campaign" was successful. After warm debates in both Houses of the Imperial Diet in 1892, the operation of the Civil Code was delayed until the last day of the year 1896, and in 1893 a codification committee was formed, under the presidency of Prince (then Marquis) Ito. Its members—all Japanese—were carefully chosen to represent all schools of legal thought, and the draft of the revised civil code, which was in reality a new compilation, was prepared by three professors of the Imperial University, of whom one represented English and German Law and belonged to the Postponement party; the second represented French Law and also belonged to the Postponement party, and the third represented French and German Law and belonged to the Anti-Postponement party.

One is happy to be able to say that, though the contestants in this fierce juristic battle were, while the contest raged, doughty champions of the teachings of their law-school days, when the battle was over they joined hands heartily in the work of proving to the nation that there had been worked out, even in their strife, a code of laws that would promote the welfare of country and people.

VIII. Conclusion

Such, then, is a most imperfect sketch of the history of legal education in Japan, and its present condition. I wish I could have made my story more worthy of the importance of the subject, for, though the law and education may not afford very dramatic or picturesque incidents, on nothing does a nation's happiness more substantially depend than upon its system of justice and the competency of those who administer it.

Some of us believe that the training up of "men learned in the law" forms one of the most creditable achievements of modern Japan. It was the swift advance of legal education that in large part enabled our government to insist with justice on the abolishment of extraterritoriality—one of the most serious difficulties she met in winning a decent and proper place in the family of civilized nations.

It is the result of this rapid progress in legal knowledge that enables us to point to our Supreme Court, 7 Courts of Appeal, 350 District and Local Courts, with 1,241 judges, 424 public prosecutors, and more than 2,000 lawyers actively practicing before those courts—all of them well educated and qualified in the law. This, coupled with the diffusion of legal knowledge among the general public, gives the administration of justice in

Japan that high, serious, and trustworthy character which marks it in the lands of highest civilization, but which perhaps no other people have attained in so short a time.

When we remember that we have attained it only through an infinite debt to so many other nations, you may well believe that we recognize one of the many ties that bind us to the great brotherhood of men—that we desire nothing more than to contribute our own little part, if it might be, that the better understanding and administration of justice, international as well as internal, may be secured, to the benefit of all mankind.

In concluding, I want to express to the officers and members of your distinguished Association my most sincere thanks for your kind indulgence in having given me the opportunity of making good this year my unfulfilled promise of last year, and for the cordial reception which you have accorded me to-day.

Report of the Executive Committee

C. H. Huberich, of Stanford University Law School, presented the following report on behalf of the Executive Committee:

The Committee after full deliberation makes the following recommendations:

1. That hereafter, at the close of the first session of each annual meeting of the Association, an informal reception to the Executive Committee and a smoker be held to facilitate personal acquaintanceship among the delegates.

2. That the application of the University of Oklahoma School of Law is approved, and it is recommended that said school be admitted to membership in the Association.

3. It is further recommended that the consideration of all other applications so far made for membership be indefinitely postponed.

[Signed] William R. Vance,
George P. Costigan, Jr.,
C. H. Huberich,
William S. Curtis.

On motion the report was accepted and its recommendations adopted.

Report of Committee on Study of Legal History

Your Committee on the Study of Legal History, appointed at the meeting of 1909,

have the honor to report progress. During the past year our work has come to a head, and the present results can be amply seen in the prospectus of the series of publications, copies of which have been distributed at this meeting.

No further statement of our work is now needed. We merely take this opportunity to urge once more upon the members of the various faculties here represented that they show an active interest in these translations when issued, and use all due efforts to make them useful to the students.

John H. Wigmore, Chairman.
Charles H. Huberich,
Ernst Freund,
Ernest G. Lorenzen,
Wm. E. Mikell,
Members of the Committee.

Report of the Committee on Study of Legal Philosophy and Jurisprudence

We have the honor to submit the report of the Committee on the Study of Legal Philosophy and Jurisprudence, appointed at the meeting of 1910.

The work done during the past year can be sufficiently seen from the prospectus, recently printed, and now distributed at this meeting, of the series of translations on Legal Philosophy and Jurisprudence.

There is nothing at this time to add to the matters mentioned in the prospectus. The Committee will merely take this opportunity to urge upon the various members of the faculties here represented their personal interest in these works as published, and their endeavors to enlist the interest of students in the study of this subject.

John H. Wigmore, Chairman.
Ernst Freund,
Ch. H. Huberich,
Albert Kocourck,
Ernest G. Lorenzen,
Roscoe Pound,
Members of the Committee.

New Officers

On the recommendation of the Nominating Committee, Roscoe Pound, of the Harvard University Law School, was elected President, and George P. Costigan, Jr., of the Northwestern Uni-

versity Law School, was elected Secretary and Treasurer, of the Association for the ensuing year.

The members of the new Executive Committee are:

William R. Vance, of the Yale Law School; William S. Curtis, of the St. Louis Law School; and William D. Lewis, of the University of Pennsylvania Law School.

Meeting of the Section of Legal Education of the American Bar Association—1911

THE Section of Legal Education of the American Bar Association met in the Walker Building, Massachusetts Institute of Technology, Boston, Mass., on August 30 and 31, 1911. Owing to the death of Geo. M. Sharp, of Maryland, chairman of the Section, and to the absence of Simeon E. Baldwin, who was appointed to act as chairman, the meeting was called to order by Henry Wade Rogers, of Connecticut. In the absence of Chas. M. Hepburn, of Indiana, secretary of the Section, Edward S. Thurston, of Illinois, was elected secretary pro tem.

The following paper, prepared by C. La Rue Munson, of Pennsylvania, in memory of Judge Sharp, was read:

In Memoriam

The Honorable George Matthews Sharp, LL. D.

I am permitted to write of your late chairman in a personal way rather than to discuss in any detail the work he so well performed for the cause of Legal Education; this for the reason that, with one exception, no other person now living knew him so well or bore toward him such intimate personal relations extending over a period of thirty-eight years. In September, 1873, we entered as chums at the Yale Law School, and two years later were called to the bar of our respective states, and during all the following years saw much of one another and preserved a friendship which closed only with his death a few weeks ago. As a personal tribute I may be permitted to say that I am well

persuaded to believe that my youthful character was much fashioned and directed by the high standards my friend ever set before me, both by example and precept. He was always the ideal gentleman, and of him as a student, as a lawyer, and as a judge it can well be said that he was "Sans peur et sans reproche." Such men as he are always the leaders in the high ethical qualities which make the great lawyer and the irreproachable jurist. It was this well-developed sense of ethics, coupled with his belief in the necessity for high standards for admission to our profession, which led him to take so active a part in the formation of this section and in its subsequent development and success.

George Matthews Sharp came of good Quaker ancestry. His father, the late Dr. A. P. Sharp, was of an old Virginia family and the founder of the leading chemical house of Sharp & Dohme, and to which his fame as a great chemist gave prominence. His maternal descent was from the Matthews, whose home in Hartford County, Maryland, has continued in that family for generations. The late Mr. Justice Stanley Matthews was his cousin, and with him he maintained for many years the most cordial and intimate relations. He was born in Baltimore on November 17, 1851, and, receiving a primary education in private schools, completed his secular education in Loyola College, subsequently entering the service of the Baltimore & Ohio Railroad for a short time. His tastes leading him in another direction, he entered the Yale Law School with the class of 1875, and at a time when that now well-known institution was emerging from a period of decadence following a brilliant earlier history. The members of that class, as well as their successors, could not fail to be impressed with the self-sacrificing labors of those who did so much to bring that School of Law to its present eminent position; their survivor there now being the distinguished Governor of Connecticut, whose title of Professor Baldwin spells

to his former students higher honors even than those he has had or is further entitled to receive from the suffrages of his fellow citizens. It was his willingness to sacrifice himself to the improvement of legal education which later inspired Judge Sharp to devote so much of his time to the cause maintained by this section.

Coming from Yale Law School in the front rank of his class he returned to Baltimore and was called to the bar of Maryland in the autumn of 1875, where he soon established himself in a remunerative practice and in the higher walks of our profession. Without being definitely advised, I am quite sure he never accepted a retainer on the criminal side of the courts, while I know from his own lips, certified by the position he has taken at the meetings of this association, that he never lowered his standing at the bar by receiving a contingent fee, and always abhorred those who would degrade our profession to a trading commercialism.

While never a politician, in the professional acceptance of the term, he was nevertheless a firm believer in the principles of the Republican party, by whom, as also by his brethren of the bar, he was regarded as so well fitted for judicial office as to give him the nomination for the Supreme Court of Baltimore in 1888, and for Attorney General of Maryland in 1891. While he failed of both of these elections, owing to the normally great majorities of the opposition party, he received many more votes than his colleagues on his tickets, and in 1897 was elected by a handsome majority to the bench for which he had first been nominated. His term would have expired in 1913, but he would have been assured of a return, and without serious opposition, owing to the record he had made as a learned, honorable, and upright judge. He was rarely reversed in the Court of Appeals, and his opinions are models of clearness and legal learning. The only criticism I could raise against his judicial career would be that he might have been inclined to lean backward, a somewhat negative fault, and one which would not be urged against the bench in some sections of other states. He often said to me that his chief regret that he was not at the bar lay in the fact that he was of necessity separated from the friendship of his professional brethren. So it was that, as my clientage was chiefly in another state and did not extend into the jurisdiction of his court, we were able to preserve a friendship commencing in our young manhood years and extending to the day of his death—an intimacy I could not have maintained, had my causes been likely to have come before him, but giving me the opportunity to know him with a familiarity few, if any, others enjoyed, whereby I possessed his entire confidence and had a peculiar knowledge of his high character and eminent qualities of heart and brain. I would sum up George

Matthews Sharp by saying that no man more noble, more ethical, more the gentleman in the best sense, more fair in judgment, less swayed by passion or prejudice, less inclined to degrade the high position of the lawyer, and less improperly approachable as a judge ever entered the ranks of our profession or wore the judicial ermine.

Of his literary work, his lectures at the Yale Law School during some thirteen years, and his labors in the cause of legal education stand out most prominently. The reports of this Association bear record of his labors in the Section of Legal Education. Another has treated the subject more satisfactorily, but a short review of Judge Sharp's work in this direction may be acceptable. Being a man of high ideals, he naturally sought to do all in his power to elevate the standards of our profession. He believed a lawyer should be first a gentleman; that he should have at least fair literary attainments, combining therewith some business education, and a mastery of the principles of the law, with sufficient practical ability to apply them to the facts arising in his causes, or in the duties of the office practitioner. He attributed the rather alarming number of undesirable and unfit young men then seeking and often gaining admission to the bar to a want of a literary and technical legal education, owing largely to the laxity of law school methods, and the money-making motive back of many of the schools. He looked beyond the earning possibilities of the profession to the maintenance of the ancient and honorable prestige of the bar, and its almost unlimited influence upon both public and private affairs. With this broad view of the subject he held that superficial and local remedies would not accomplish the desired results, and so determined to use his influence and direct his energies toward advocating and bringing about certain radical reforms, which he and his associates in this work believed would effect a permanent cure for many of the ills from which the profession was suffering.

This Association seemed to offer the best facilities and promised the greatest assistance in undertaking this rather uncertain, but surely laborious, task. For several years and prior to the formation of this section the Committee on Legal Education, of which Judge Sharp was one of its most active members, undertook to gather the fullest possible information as to the then condition of legal education in the United States and other countries. As the result of this wide-extended investigation, several exhaustive and most interesting reports were submitted to the Association, accompanied by elaborated tables of statistics made up from the catalogues of all the law schools of our country, and in these labors Judge Sharp had large share, and to them devoted much time and attention. From the reports and statistics it clearly appeared that education

in law schools had largely superseded the old method of office training, and that from then on they would be largely responsible for the character and efficiency of the bar; but it was also apparent that a lamentable condition existed in the lack of proper and uniform requirement for entrance into these schools, curriculum, length of course, etc., these institutions varying all the way from the most unsatisfactory one-year school with night courses, through a better class with two-year requirements, to satisfactory schools requiring three and four years' attendance. To cope with a situation at once so grave, important, and far-reaching necessitated thought, energy, and action, resulting in the erection of this section, and in which Judge Sharp served faithfully for about ten years as its secretary, during all of that time enthusiastically giving of his time, ability, and energy.

He lived to see fulfilled many of the reforms for which he had so diligently and energetically labored, including the adoption very generally of State Boards of Law Examiners, in place of the much-abused custom of local admissions theretofore prevailing. It was fitting that he should have ended his career in this cause after being chosen your chairman; an honor he highly appreciated and a duty he would have acceptably performed.

After an illness of but a few weeks he fell asleep on July 7th last, in full possession of his mental activities, assured of his spiritual welfare, and facing death firmly and with a brave heart. His memory is enshrined in the hearts of those who valued his friendship. He possessed the full regard of his judicial associates, and the high respect of the bar, while in this Association, and particularly in this section, his work remains an enduring monument.

Owing to lack of space, it is impossible to report in this issue of the American Law School Review all the proceedings of the meetings of the Section of Legal Education. The following extracts, however, from papers read and remarks made will doubtless be of interest to the readers of this magazine:

From the paper entitled "The Study of Roman Law in American Law Schools," by Simeon E. Baldwin, of Connecticut:

The lawyers of Louisiana, by force of circumstances, were compelled to study Roman Law, to gain light as to the meaning of the Spanish and French codes. But elsewhere,

with occasional exceptions, such as that offered by Hugh S. Legare, of South Carolina, John Pickering, of Massachusetts, and John Anthon, of New York, it received almost no attention from the practicing American lawyer, and little from the American law student, during the first three-quarters of the nineteenth century.

It was taught as an elective study in Latin at Yale College by one of the tutors (Joseph G. E. Larned) in 1843, and from 1848 to 1851, at the Harvard Law School, by Luther S. Cushing, the author of "An introduction to the Study of Roman Law," published in 1854. In the next decade, Professor James Hadley, of Yale College, gave a short lecture course upon the subject, then to the academic students, which he soon afterwards repeated, from year to year, in the Yale Law School. Instruction in the subject was offered at the Columbia Law School at about the same time, as a part of the courses devoted to Public Law and Political Science; and a distinct chair of Roman Law was established in 1891.

From the beginning of the last quarter of the nineteenth century the importance of the topic has gained fuller and fuller recognition, and, though still regarded as among the minor ones, regular instruction in it has now been long given in a number of our law schools.

The organization of graduate courses in law schools, begun at Yale in 1876, has done much to strengthen this tendency.

Roman Law is nowhere, I believe, made a required study for the ordinary bachelor's degree, but is when Bachelor of Civil Law or Doctor of Civil Law is sought.

The undergraduate instruction is mainly by lectures, with references to text-books (including the Institutes and cases). In the graduate courses, the sources are consulted, and the student has an opportunity to make himself familiar with the Institutes of Justinian, the Commentaries of Gaius, and some * * * of the more important titles of the Digest.

In addition to the English text-books on the Civil Law or Roman Law, there are several of American origin. Professor Theodore W. Dwight, of the Columbia Law School, brought out, in 1864, an edition of Maine's "Ancient Law," with an introduction especially designed for the use of law students. Professor Hadley's "Introduction to Roman Law" appeared in 1873. Chancellor Hammond published in 1875 an edition of Sanders' translation of the Institutes of Justinian, with an introduction, afterwards put out separately under the title of the "System of Legal Classification of Hale and Blackstone in its Relation to the Civil Law." "Essays in Anglo-Saxon Law" followed in 1876, which compare that legislation with the beginnings of the Roman system. In 1884 Professor Morey, of the University of

Rochester, published his "Outlines of Roman Law," and in 1896 Professor Sherman, of the Yale Law School, brought out his edition of Bernard's First Year of Roman Law.

England has done more than the United States in adding to the literature of instruction in Roman Law, though less in the practical work of such instruction.

Until 1870 it was hardly taught there save in name. Ambassador Bryce then succeeded to the position of Regius Professor of Civil Law at Oxford, and held it until 1893. He gave some thirty lectures annually, and, like everything that comes from his hand, they were very carefully thought out and effectively expressed. In his inaugural address he said, as to the direct money value of the study, that "a man in brisk practice will find many occasions in which the knowledge of foreign or colonial law is of great value to him." In his closing lecture, twenty-three years later, he said that experience had convinced him that such occasions were very rare. He remained, however, of the opinion which he had expressed in 1870, that if two men began a three years' study of law at the same time, one giving his first year wholly to Roman Law, and the other confining himself from the first to English Law, the end of the period would find the former ahead.

May I venture to state what Roman Law has been to me, for one's own experience, after all, is always the best worth telling? I was attracted to its study, when a young lawyer, by the influence of Professor James Hadley, who was then teaching it at Yale, and by his advising me to read Maine's "Ancient Law." His death occurred soon afterwards, and I succeeded him as lecturer on the subject in the Yale Law School. What I learned of it kindled my enthusiasm, and fed whatever taste I had for classical scholarship and for the history of institutions; but, like Mr. Bryce, I must own that I have seldom found the opportunity to make much practical use of my knowledge.

In lecturing on the subject, which I began in 1875, my plan was to examine the class briefly, before each lecture, on what had been said in the preceding one, and also on some case given out for the purpose. Of these cases eleven were printed for their use, the course stopping with twelve lectures.

As to how far I have found the Roman Law worth bringing forward for practical use, as a lawyer or a judge, I will say that in 1872 I made some reference to the first book of the Institutes in arguing an injunction suit. In 1879, in an action turning on the construction of a will as to the rights of a substituted legatee, I quoted several passages of the Digest in support of our claims, but I think without making any particular impression on the mind of the court. The next year I was counsel for

the owner of the legal title to a considerable part of a Connecticut village, which was in the possession of numerous occupants, who had put permanent improvements on the land. I recovered judgment in ejectment against one of them in the Circuit Court of the United States, and he thereupon, on an ancillary bill for an injunction, claimed the benefit of an "occupying claimants" statute. His counsel relied on the case of *Bright v. Boyd*, 1 Story, 478, 2 Story, 605, Fed. Cas. Nos. 1,875, 1,876. I argued at considerable length that, while professedly founded on the Roman Law, they went beyond it; but all my quotations from the Digest failed to convince the court that Judge Story was in error.

In a case before the Supreme Judicial Court of Massachusetts, in 1890, involving the validity of a decree made by three visitors of a theological school, one of whom it was charged came to the hearing with a prejudice against the party, a professor in the school, whose conduct was in question, I quoted the Roman law on two points; but the case went off on another. It so happened, however (and the anecdote is no bad illustration of the truth that slight causes often produce important results), that one of the auditors at the trial was a young man then studying Roman Law. He remarked my allusion to it, and looked up the point in the books. His attention became engaged in the subject, he took a new interest in his studies, and the final result was that he has made the teaching of Roman Law the main work of his life.

While on the bench, I had this case to deal with: A guest at a Saratoga hotel, who had bought tickets to New Haven by way of the Hudson River Railroad from Albany, was given by the hotel porter a check for his trunk to New Haven by way of Springfield on the Boston & Albany Railroad. The trunk was lost in consequence of the falling of a defective bridge in Massachusetts. What duty did the Boston & Albany Railroad owe its owner?

In reasoning this out in the opinion of the court, which I wrote, we relied in part on the Roman Law doctrine, partially set forth in *Coggs v. Bernard*, Ld. Raym. 909, as to the liability of depositaries, confining it to negligence that is really culpable, which in the case at bar could not be claimed. Here we quoted both the Institutes and the Digest.

In an opinion published in the same volume, I referred at some length to the Roman Law in considering the foundations of jurisdiction over nonresidents; and it was also made a subject of discussion in a dissenting opinion.

I now recall no other cases in the argument or decision of which I have had occasion to make use of what I know of Roman Law. Nevertheless, I am glad of

every hour—and there have been many—which I have ever spent on its study. And here I can agree unreservedly with Mr. Bryce in his remark that it is not so much because English Law is like Roman, but because it is unlike, that the study is really to be recommended. It helps us to realize what our own law is, if we are able to compare it intelligently with any system of foreign law; and most of all are we thus helped by the law of Rome, because it was once the law of all civilized nations, and is still the force underlying that of most of them.

Simply for what it is, in itself, however, it is assuming everywhere a position of larger importance since the creation of the Hague Tribunal and the movements that promise soon two courts of international justice. The judges, in causes coming before that tribunal and those courts, will be, for the greater part, men trained under the Civil Law. To the American lawyer who argues before them it will be all-important to distinguish their point of view, and to find some common ground from which to start. A knowledge of Roman Law, at least in outline, and sufficient familiarity with its literature to tell him where to look for its rules on any particular point, is almost a necessity for what we call the "international lawyer."

From the paper on "The Advisability of a Law School Training as a Prerequisite for Admission to the Bar," by John B. Sanborn, of Wisconsin:

It seems to me that the time has arrived when we can say to the student that it is not alone enough that he study for a time in his own way and then pass a bar examination, but that one can say to him that he spend a portion at least of that time in a professional school of proper standing.

The increased complexity of social and business relations, the growth of fortunes and of corporations, the increase in the legal regulation of the affairs of every person, all demand of the lawyer, as a lawyer as well as a citizen, an equipment superior to that required a quarter of a century ago. It is true that we cannot expect that all lawyers will be prepared to advise in affairs of great magnitude; but all lawyers are more or less affected by the changes in society, and they all must be prepared to meet the problems which these changes have brought about.

To meet this added demand upon the lawyer, are the present unrestricted requirements of preliminary legal study sufficient? Do they allow a sufficient test of the candidate's ability, when they depend so much upon the examination alone? In addition, is there something in the law school training which fur-

nishes something, not obtainable elsewhere, which is indispensable to the proper equipment of a lawyer?

If there is anything in the example of other professions, one would say "Yes." In many states an examination for a license to practice medicine, dentistry, or even veterinary medicine, can only be taken after a full course in a professional school of prescribed standing. In my own state of Wisconsin the prospective doctor or dentist must have this preparation, while examinations for the profession of law or barbering may be taken without it. The argument may be a weak one; it may be no argument at all; but I confess that, when I see that a doctor's training involves study in a professional school and a lawyer's does not, I feel that the medical profession is setting a higher standard than the legal.

Why has there been this change in the requirements for medicine? What does the medical school furnish which the doctor's office does not, sufficient to furnish a justification for the demand that a doctor receive his training in a school? I presume, if you put this question to a doctor who had considered the matter, he would say that the medical school gives trained instructions, particularly in the pure sciences, and furnishes laboratory work and clinics.

He would tell you that the doctor in active practice may have neither the training, the ability, nor the time to give a student in his office instruction in those fundamental sciences which underlie the more strictly professional work of the physician or surgeon, such as zoölogy, chemistry, and psychology, and that he is apt to be too specialized, as well as too busy, to instruct in the more practical branches of the profession.

He would claim that few doctors have the well-equipped laboratory with its facilities for analysis and dissection, or the range of materials upon which the student may work. For this the medical school, with its expensive equipment, is necessary for the proper foundation.

He would assert that only in the clinic, connected with the large hospital, where the student may see operations and treatment by leaders of the profession, can the student obtain the requisite knowledge to equip him to meet the various emergencies of his career.

It will not do to assume that the foregoing reasons, which undoubtedly apply with great force to the study of medicine, have any similar application to the study of law. We must recognize the wide difference in the teaching of the two professions. The law teacher cannot adopt the method of experimentation. Vivisection has not yet been applied, except perhaps by the young practitioner, to the study of law. I have sometimes wished that a law student might be in the happy condition of a medical friend of mine who studied in a certain foreign country much in repute

among students of medicine. He said that the peculiar excellence of this country, from the viewpoint of a medical student, lay in the fact that its doctors were strong on diagnosis and weak on treatment, whereby one could usually check his diagnosis by a post mortem.

We must admit that the clinical argument does not apply to the law school. The office is the place to learn practice. A trial in a justice court gives a much better training in the practice of law than does the best moot court ever organized. The student court can in no proper sense be compared to the medical clinic. I have become firmly convinced that the law school which tries to give instruction in the art as well as the science of practice, which leaves the fundamental principles which underlie all practice and attempts to follow the shifting codes and practice acts of various states, is wasting the time both of its faculty and its students. This should frankly be left to the office.

Nor does the law school furnish a laboratory in the true sense of the word. It should, however, give the student a library far superior to that which would be accessible to him in any ordinary law office. The working library of the lawyer, often sufficient for his practice and supplemented by a bar association, or court library in case of need, is not the library which is needed by the law student. It is too specialized, too narrow, for any proper training in the fundamentals of law. Nor does the student have free access to the larger libraries, if any exist in his locality, the use of which is usually too restricted to meet his needs.

The trained teacher is as important to the law student as to the medical student. Only in the law school can one receive any systematic instruction in the fundamentals of the substantive law. The lawyer in active practice knows little of the real principles of pleading, of real property, of trusts, or of equity, unless the litigation which he has been in has led him in some one of these directions. Only in the law school can a student receive training in the analysis of cases, in the application of general principles to a stated body of facts, or in the contrasting or harmonizing of various decisions. The office student does something of this, not as a student, but as a partisan advocate, and even then is spasmodic and unsystematic.

It thus appears to me that the law school must leave to the office, either before or after admission to the bar, the clinical work of real practice, and must base its claim to a required place in the preparation for bar examinations on the fact that it alone can furnish the student with a library in which to study and a systematic training in the fundamentals of the science of law—namely, its general substantive principles and their application to various states of facts. If

these are indispensable, and if the law school alone can furnish them, and I think both propositions are true, then law school training should be a part of the preparation of every law student.

From the paper on "The Crisis of the Law and Professional Incompetency," by Frederic R. Coudert, of New York:

The bar can no longer afford to blink the fact that "the law" has become thoroughly unpopular. It may be that this unpopularity is in whole or in great part undeserved; but, in any event, we are not justified in refusing to examine into the question whether this be so or not. Popularity is no sure index of right or wrong. There is no divine justice in the judgment of a mob, and the opinion of the man in the street upon so big a matter as the law may be of little moment; but when in our community a feeling is widespread, intense, and of long duration, it is not safe to refuse to examine into its causes. The course of the Reformation might have been substantially modified and the excesses of the French Revolution wholly avoided if the governing classes had not been quite so complacently unheeding of popular discontent. * * *

The ordinary individual is either in some bread-winning business, or owns some property, or both. At any time he may feel that his personal or property rights have been infringed. Naturally, and in an ideal community, he would seek the advice of one skilled in the law, and would place himself under the protectingegis of justice for a full vindication of his rights. In practice, however, it is notorious that the ordinary individual, unless he is wealthy, idle, or temperamentally litigious, shuns the courts. This is mainly because of the great expense and delay which cause him to believe that he had better forego (especially if he has ever been in a lawsuit) the attempt to vindicate his rights, rather than subject himself to a procedure which he does not understand, and to be engaged in litigation the end of which he can neither foresee nor foretell. He thus contents himself with making the best settlement he can, if any; and becoming an embittered critic of the law.

This is not a new evil. In the first half of the nineteenth century in England it was said that no man in middle life, beginning a suit in equity, could possibly hope to live to see the end; and yet in the English law courts matters are now disposed of with an expedition, a rapidity, and a substantial justice which put us so-called progressive Americans to shame. Why is it?

Law reform is no new cry. In New York state it has been mooted, agitated, and enacted

ed constantly for half a century; and yet in 1904 the commission appointed by the Governor, pursuant to act of the Legislature, reported after a careful examination of the conditions of the calendars in New York and Kings county that: "The situation thus disclosed is of the gravest character. The authority of the courts is seriously impaired by their inability to render speedy justice, and they must accordingly suffer a loss of respect from the people who maintain them. 'Justice delayed is justice denied' is a maxim of universal acceptance, and the indifference of any people to injustice marks the period of their decadence."

As though to emphasize the seriousness of the situation and the fact that these last sentences were penned in full light of past history, the words of Gibbon are quoted by the commission: "By these dilatory and expensive proceedings the wealthy pleader obtains a more certain advantage than he could hope from the accidental corruption of a judge." These are not the views of persons ignorant or careless of the law, nor of an orator carried away by the applause of unsuccessful litigants, but the calm statement of a commission of seven eminent lawyers, two of them ex-presidents of the Bar Association. * * *

To my mind, the general unpopularity, not to say disrepute, into which the law, and thereby the administration of justice, has fallen, is due primarily to incompetency both of the bar and the bench. Let me say at the outset that I believe our judges to be honest and generally industrious and anxious to be impartial; but in too many cases the necessary temperament, general education, and technical skill are lacking in the state courts, owing to the fact that the judicial positions are political rewards rather than well-earned distinctions due to professional and civil service.

The functions of a judge are not difficult. A fair professional training, sound common sense, and willingness to work are sufficient to make a judge efficient and esteemed. It must be remembered that the hard work is done by counsel. The judge who is attentive and is assisted by able counsel hears both sides of every question thoroughly canvassed, the authorities in support of every proposition are adduced and analyzed, and it is only necessary for him to decide between the conflicting views.

The judge, however, is much handicapped when not assisted by able counsel. Especially in the city of New York, with the tremendously crowded calendars, it is almost impossible, humanly speaking, for the judge himself to examine the authorities cited, or to do much more than to read the briefs of counsel or hear their arguments. Where the case is complicated and the counsel inefficient, the judge is doubly burdened. Where a judge

gets inadequate assistance from the bar, he must be of more than ordinary ability not to fall constantly into error.

To those who have watched the young lawyers coming to the bar in these later years, and have seen much of the bar generally, the ignorance and incompetency displayed by them are appalling. The writer of this paper was for three years a member of the Committee on Character and Conduct, appointed by the Appellate Division of the First Department, to pass upon the young men coming up for admission to the bar. He was thus necessarily brought into contact with some hundreds of candidates each year. Among them were many who were evidently intelligent and well equipped, but it is fair to say that a very large percentage, possibly considerably more than half, were unfitted to enter any learned profession. The answers made by many of them to questions indicated that they had no grasp of the real duties or functions of a lawyer, no idea of the relations existing between law and morals, and that they had simply memorized sufficient misunderstood matter to enable them to pass an examination. The spectacle was little short of lamentable, and the character of the intellectual tests required were illustrated by the rather amusing feature that frequently some of the more intelligent and better equipped young men coming from one of the great university law schools of the country had not been able to pass the examination until after several trials.

The admission of a large number of unlearned, unlettered, and utterly untrained young lawyers, with no *esprit du corps* and little regard for the traditions of the profession, has been having and will continue to have a deleterious effect upon the administration of justice. * * *

Again, ignorance of the technicalities of the law results in a great number of reversals and of new trials, often in cases in which the result reached was just, but the methods subversive of precedents and of the orderly administration of justice. Enormous numbers of practice motions are made, which never would have to be made if lawyers knew how to state their cause of action and draw their papers. Nearly all of these motions might be decided from the bench, if they were properly presented by counsel and thoroughly understood by judges. The practice of holding these trivial motions for weeks, sometimes for months, is utterly vicious.

Mr. Brice, in his biographical sketch of Sir George Jessel, late Lord Chancellor, relates that during his long and honorable career upon only three occasions did he fail to decide the matter presented to him at the termination of the case or of the argument. And yet in New York City trifling practice motions for amending answers, striking out portions of pleadings, making matters more

definite and certain, etc., are taken under advisement for an indefinite time. The public naturally believe all this due to legal technicality, and think the law a mere Chinese puzzle, enacted by lawyers for the benefit of lawyers; the real fact being that, had the people always chosen to elect competent judges, and more clients represented by trained lawyers, a way could almost always be found to do justice without violence to those rules and precedents which are necessary in order to secure some degree of certainty and uniformity.

From the remarks of Andrew A. Bruce, of North Dakota, on "The True Mission of State Boards of Bar Examiners and Their Opportunity in Legal Education":

Everybody knows that in an ordinary town a man who runs for state's attorney or district attorney is a young man, and he runs and is elected because people think he needs the job to make a living. Judge Black once said: "We may say all we like about constitutional rules; but if we will insist on electing to the office of state's attorney a man because he can shout loud at the hustings, we must not wonder if sometimes his indictments are quashed and he falls when he runs up against a good lawyer." * * *

At the meeting of the Association of Law Schools a paper was read on the true function of the law school teacher, but there was one function that was not touched upon at all; that is, the function of the law school to train an intelligent citizenship and an intelligent leadership. In my state, when men ask, Why do you have a law school connected with the university? I do not say to train practicing lawyers. I do not believe that a law school should merely be a lawyer incubator. We all realize the necessity of a high standard at the bar, but after all a law school is even bigger than that. I say that in a democratic state, where every man is presumed to know the law, where every one is in politics, where every man can get to the legislature, where you can form the popular opinion which elects judges, and destroys them, too—in a state of that kind, in an age when we are getting down to the referendum and the recall, it is necessary above all things that in the educational system there shall be some means and some avenue where the public citizen may become acquainted with the rules of society which govern him and the rules of civilization. I say that a law school is infinitely bigger than that. The function of the university is to train, not merely lawyers, but social leaders. When we forget that, we forget an important part of the whole problem.

And when I come to think of that, I think

of the function of the Bar Examiner. What an important part the Bar Examiner must play in this problem! I believe there should be a wide distinction between the right to study law and the right to practice law. In the West we can never get a statute through that will prohibit a high school man from studying law. We can get statutes through that will say that no man who has not a college diploma shall practice law. Boards of Bar examiners should keep high the standard of the right to practice law. As a matter of fact they are about the only men that can do it in most of the states. The Bar Examiner, representing all of the people of the state, being without any personal interest, can appeal to the legislature, and can lead in the advance. There is, I know, a peculiar condition of affairs in America. There is a peculiar condition of affairs in the Association of American Law Schools. The latter has time and time again declared that there shall be State Boards of Law Examiners and that no man shall be admitted to the bar who does not pass their examinations. Yet almost every Western law school has gone to the legislature in the past, and quite recently, in one or two instances, and obtained the passage of a statute by which their candidates are admitted to the bar without such an examination. The diploma of the University of Wisconsin admits to the bar. The diploma of the Law School of Minnesota admits to the bar. The diploma of the University of Nebraska admits to the bar. The diplomas of nearly all of the Western law schools admit to the bar. One great consideration to entering a law school is the fact that the boys need not take the Bar Association after they get through the law school. Men ask me whether our diploma will admit to the bar. The schools are taking no steps towards adopting a rule that their representatives in the Association of American Law Schools have voted for. Why? It is simply because they do not trust the Boards of Bar Examiners, and they do not realize that their institutions will have real justice.

I say that law is something more than teaching a man how to make his bread and butter. You have got to teach a man ethics, sociology, history, the great struggle of the races; for in this age all law is merely applied political economy, applied social ethics, and applied civilization. If we are going to lead the great social advance in law, we must have men thoroughly trained on something besides the mere technical rules of practice. I notice in the ordinary Boards of Bar Examiners some are well equipped and some are not well equipped. I notice in one state that they had an examination lasting one day, and the only subject examined upon was the subject of Contracts. I know another state which spent only a day on the examinations, in which fifty questions are given,

and one-half of those are on the subject of Pleading and Practice. In those states—and there are numbers of them—a man who would be a giant at the bar, but who does not happen to have studied the technical practice of that state, or who may not feel well or have overworked the day before, and whose nerves have been stamped in the first onslaught, will fail of passing, while a man thoroughly conversant with the practice in that state will be admitted with flying colors. It does seem to me that the Bar Examiners of the state should see to it that their examinations are high, that they extend over a period of days, that there are a number of subjects, so that the man who is thoroughly trained and qualified can show his ability and the man who is not will fail.

From the remarks of Hollis R. Bailey,
of the Board of Bar Examiners for
Massachusetts:

At the meeting in Portland, Maine, some years ago, I introduced a resolution that it would be a wise practice for the different Boards of Bar Examiners throughout the country, in making their reports to the courts and in moving the admission of applicants who have been qualified, to recommend the first six, eight, or ten, or some such suitable number, cum laude, basing that result upon the merits of the different examination papers. That motion was referred to the committee which I am now a member of. There never has been anything much done about it, but I hope that something may be done some time. I do not ask for any action at this meeting about it, but I do wish to bring the matter up and make a few observations concerning it.

I was led to make that motion by information which I obtained in England that for 15 or 20 years or more it had been the custom to recommend four or five out of a class of fifty. They have four examinations a year over there. I am speaking now of the solicitors' examination, and what I say is equally true, I believe, of the barristers' examination. They have an examination at each term of court, and they examine usually between forty and fifty men, and four or five of them that do the best are recommended with distinction when they are admitted. The names of the first four or five who stand the highest are called first, and it is an honor which is much sought after, and it tends to raise the standard of the profession. I may say that there they not only have the distinction of being called first, but there are money prizes, varying in amount from fifty dollars to one hundred dollars, awarded out of funds which have been contributed by various persons at different times who are interested in the subject of legal education.

From the remarks of Franklin M. Danaher, of the Board of Law Examiners for New York:

In New York state we have found problems that no other state could possibly encounter. The problems are so great that there is almost a line of cleavage between the great metropolitan and cosmopolitan city of Greater New York, with its 16,000 practicing lawyers, and the rest of the state, where none of the racial and educational and economic problems, as well as the problems of moral character, which always are at the surface in New York, obtain. We gain comparatively more as a general rule by insisting upon a long period of clerkship, upon pre-educational qualifications, and upon hard bar examinations. We have gradually increased the requirements from year to year, until we are pretty nearly arriving at perfection. It was not until the festering sore in the moral and economic profession in New York began to spread from the gutter up among the men who argue the big cases before the Court of Appeals, and when the great mass of lawyers, that were admitted by reason of conditions that made it easier to become a lawyer in New York than it was to become a horse doctor, began to affect the men at the top, that they commenced to take very serious notice, and took the subject up as a matter of economics, as well as a matter of education.

The first cause of complaint in New York City came from the courts themselves. The judges found that the calendars were being overlaid with appeals from orders arising out of practice matters, and that they were being clogged by the new-fangled idea that every man is competent to try a case. The appellate courts were very much overburdened, and they set about an inquiry in a practical way to determine whether something could not be done to remedy the evil, and not to admit to the bar men who were, as far as the practical side of the profession was concerned, without an adequate knowledge of the principles of practice and procedure, as well as the rules of evidence. There was no way of forcing a man to study any subject that he did not wish to study, nor was there any way to enforce any rule by which law schools were compelled by statute to teach the principles of practice and pleading and to pay more attention to the practical side of evidence. It was therefore determined that an appeal should be made to the State Board of Bar Examiners, to see if they could not differentiate between objective and substantive law and pleading and practice on one side, and allow no man to receive a certificate unless he showed a certain proficiency in practice and pleading and in evidence, as well as in substantive law.

The Board of Bar Examiners was induced

to and did divide the subject into two groups: Group 1, consisting of pleadings, practice, and evidence; group 2, consisting of the balance of the law subjects which we examine applicants in. Under the system theretofore in existence we had marked the papers of applicants as a whole, and weakness in one subject was helped out by strength in another subject. A man might fail utterly in criminal law or in corporation law, and yet sustain general strength along other lines. But now the rule has been so far amended that we force a man to study and pass a satisfactory examination in pleading and practice, and no man can get a certificate from us until he shows a certain proficiency in that subject. The result of all this is that the number of rejections made by the State Board of Law Examiners in New York has almost doubled. In June of this year the percentage of failures was 59 per cent. We have had 62 and 64 per cent. The great majority of the men fail in pleading, practice, and evidence. As bearing on the extent and character of our work and what we do in New York, I make the astounding statement that we have 809 law students upon our list that have failed one or more times to pass the Bar examination; that out of that number 416 have failed on their entire papers, both in substantive law and in pleading, practice, and evidence; and that 301 have failed specially in pleading, practice, and evidence, but have passed in substantive law, while 92 have passed in pleading, practice, and evidence and failed in substantive law. In other words, in round numbers, out of 800 rejects upon our list to-day, 700 have failed in pleading, practice, and evidence and 100 have failed in general subjects. * * *

Now I wish to say that there is a surprising lack of interest in the profession at large in the matter of admission to the bar. You cannot get legislators to move faster than public opinion at the bar demands. It is a curious fact in New York City that the doctors can go to the legislature and get a law passed which compels all doctors to take four years in an approved medical school, dentists two years in a dental college, and horse doctors two years in a veterinary college; but when you come to talk to members of the legislature about the matter of admission to the bar, it is very hard. Whether it is indifference on their part, or whether they feel that it is all right to give the boys a show, I do not know. I want to say this, however, and to lay great stress upon this point: That admission to the bar and higher requirements for admission will not go in advance of public opinion. That which the profession wants it will eventually get, if it will only ask for it. Therefore the only proper way to do is to agitate. I want to say, with a great deal of misgiving, that in the great state of New York, where we examine 1,400 candidates a year, where we

have 600 candidates in a class, where we have admitted 15,000 men to the bar in the past sixteen years, that we have found that the educational test, in view of the fact that the education is general and easily obtained, and stiff bar examinations, has not produced the result we thought it would. I do not want to say that it is a failure, but morality at the bar is in direct proportion to its prosperity. You are not going to have a more moral bar, or a better bar, or raise the administration of justice, until you make it possible for every man at the bar, the most lowly as well as the man at the top, to get an honest wage. Two-thirds of the fraud and villainy among members of the bar comes from poverty, and not from an innate sense of wrongdoing or a desire to be crooked.

The result is, in my opinion, that until you make up your minds that it has got to be an economic question, and that it has to do with the administration of justice and the standing of the bar, as well as an educational question, unless you come to the opinion that you have got to raise the conditions of admission to the bar, so that for every man who stands at the threshold to determine which of the numerous branches of professional life he will follow, in order that he may obtain both fame and fortune, the choice will not lie between a cheap passage to the law or a more expensive passage to the horse doctor. You are not going to reach the best result in its full fruition unless you make it economically impossible for the great mass of young men to come to the profession that they find is cheaper in the expenditure of both money and time than that required to become the member of any other profession. In my opinion it has got to be arranged with the view to economics, and whenever among your conferees in the profession you find a feeling of lassitude, a feeling of "I don't care," and a feeling of "Give the boys a show," then you have got to use the economic argument, and tell them that, outside of the benefit which will come to the profession from having fit men admitted to it, you can produce a moral and intelligent bar, by raising the standard, not only of education, but along economic lines, so that every Tom, Dick, and Harry cannot come to the bar.

In reply to a question as to what, if anything, does the New York Board do in the way of examining into the character of the applicants, Mr. Dana-her said:

The Board of Law Examiners in New York state has nothing whatever to do officially in respect of the character of the applicants

that come before it. The applicants come before us certified by a diploma on graduation from some college or university, or they present a certificate from the Board of Regents of the state. The question of their character is in the hands of the court. We have no rules searching into the character of the applicants who come before us at all. The Supreme Court in each department of the state appoints a committee of lawyers before whom every applicant that has been certified by the Board of Law Examiners is required to appear in person, and it is the duty of that committee to inquire into the character of applicants. In New York City they publish the names of the applicants in the Law Journal for three weeks, and request people to inform them concerning the character and fitness of the men who apply for admission to the bar, and they have a right to make an inquiry into what they call the fitness of the individual, as well as his ability to read, write, and speak the English language.

Russell Whitman, of the Board of Bar Examiners for Illinois, said in part:

We have a rule in Illinois that there shall be published in a newspaper for ten days before the time set for examination the names of all candidates who are applying for admission to the bar. There is also a rule that two reputable members of the bar must appear in court and vouch for the character of each candidate. We have perhaps 600 candidates a year in our state, and there are so many candidates that the rule is passed over without very much attention. A lawyer may meet another in the corridor and say, "Here is a young man that I know; I used to know his father; he comes from my town, and I want you to sign this paper for him," and that is the way it is oftentimes done, and the young man himself is not actually known to the lawyer who vouches for him. We have a rule, too, that every candidate must be known by the man who stands sponsor for him. Yet in actual practice we find that the rule is not observed as it should be.

Now, what we are going to do is this, in Illinois: We are going to borrow a leaf from the naturalization laws, if we can get the courts to agree to it, and have the attorney for the State Bar Association, whose function is particularly looking after bar disbarment proceedings, whenever anybody comes up as sponsor for a young man, we are going to have him examined. We figure that in this way, if a man comes into court, and the attorney for the Bar Association gets an opportunity of asking him a dozen questions or so, we can come pretty nearly finding out how much he knows about the young man that he has recommended.

William R. Vance, of Connecticut, said in part:

The discussion that has taken place here this afternoon seems to me to have brought out the fact with luminous clearness that the weakest chain in our system of legal education as introductory to the bar is found in the moral element, as Judge Danaher has suggested. After all, rules and statutes, regulations and examinations, are not going to eradicate the very real evil that now exists. Therefore it seems to me a strange thing that law schools have been careless by not considering seriously methods that lie perhaps right at their hands for the purpose of strengthening the moral character of the young men that pass through the schools. It has been stated by inference that sometimes degrees are granted in law schools to men about whose moral character the members of the faculty have at least some question, and I think that is perhaps true. Now, can we not get at the evil?

If you will permit me, I would like to tell about a little experience that I had myself. In 1903 I went to Washington from a small law school down in Virginia, where the most serious charge that could be made against a man was that he had cheated either on examination or in his classroom, or had been guilty of any kind of dishonorable conduct. You might call him foolish or stupid, but you must not question his honor. The first faculty meeting that I attended at the large law school with which I had become connected in Washington, where there were some five hundred or six hundred students, I was horrified to hear one of the professors bring up a case of suspected cheating on examination. There were two examination papers exactly alike. Nobody knew how they could have been copied, yet there they were exactly alike. The young men were called in, two of them. Each one swore like a gentleman that he knew nothing about it. He would not tell on his comrade. Then the question was, Should both of them be denied their degree, or must some X-ray psychological process be employed, by which it might be determined which one was lying and who had really done the copying? Well, nothing could be done. The following year Henry St. George Tucker, who was then the Dean of that school, introduced a resolution that the honor system should be adopted there. It was really startling to see the effect. The resolution carried only after some very strenuous efforts by a narrow majority of one. After that I was connected with the school for seven years. I examined myself during that period about 4,500 examination papers, and during that time I never saw the least evidence that would justify the suspicion of any cheating. There were, however, several cases where young men were inform-

ed that they could not come back to the school. Year before last the committee in the first-year class informed me that a certain Filipino student had been tried for cheating in the examinations, that the usual committee of five that had been appointed was reduced to four, and the four were equally divided as to his guilt. The examinations were all over, and the students had gone, and the committee were wondering what they were going to do. If the student was guilty of cheating, he would not be allowed to return to the school. They requested me to consent to sit as judge and jury, with the assent of the accused, and try the case over again. There was nothing else to be done, although I objected. I very quickly decided that on the facts there was very little evidence of the young man's guilt, although the Filipino may have been making Spanish notes, so I very promptly rendered my decision exculpating him. The next morning I received a very large box of cigars from the Filipino, who had that same day sailed for Manila.

Frank Irvine:

Where was the moral stain in that case?

F. M. Danaher:

And what became of the cigars?

William R. Vance:

I think I ought to explain. When Lord Bacon was before Parliament charged with having received bribes, he defended himself thus: "I do assure you, my Lords, that in no single case did I ever accept a present until after the case was decided." The Parliament committee did not seem to think that a very satisfactory explanation; so in my case I saw nothing to do with the cigars except to burn them up, and they are all gone.

I am aware that many of my friends in the law schools think the honor system is more or less of a silly notion, and that it won't do for hardheaded business men to take up; but I tell you that sooner or later we are going to recognize that it is one of the ways in which the law schools will be enabled to build up the moral character of their students. I think the honor system ought to be extended beyond the University of Virginia. Furthermore, that is one of the best ways to prevent cheating at examinations.

Henry Wade Rogers, of Connecticut:

A resolution was introduced at the meeting of the Section on Legal Education at Seattle in reference to conferring the LL.B. degree. That resolution was referred to a committee of three—consisting of myself, as chairman, Professor Gregory, who was then Dean of the Law School of the University of Iowa, and Mr. Costigan, who was then Dean

of the Law School of the University of Nebraska. We considered the resolution which was referred to us, and made a report at the meeting of the section in Detroit. There was no time at the Detroit meeting to consider it, and it went over. It should have been considered at the meeting in Chattanooga, but as it was impossible for me to be at Chattanooga last year and on account of my absence the matter was deferred to this year. I will simply read the two resolutions, without reading the report, because the report has been printed and no doubt those of you who are at all interested in the subject are familiar with it. The two resolutions are as follows:

"First. Resolved, that the section advise the American Bar Association that in its opinion the right to grant the LL.B. degree ought, in the United States, as in England and Scotland, to be restricted to schools in law having a three years course of study for that degree, and do further advise that schools having only a two years course for the degree should grant, as in Scotland, the degree of L.B. It further advises that schools having a course of only one year should not have the right to confer any law degree.

"Second. Resolved, that the section advises the American Bar Association that in its opinion it is desirable that the right to confer degrees should be regulated by a uniform law."

By the last expression we did not mean necessarily a law established by legislative action, but that there should be unanimity as far as possible to secure it in the requirements governing the degree.

I am not going to make any speech on this subject, but I want to say by way of explanation that in England none of the universities can grant a degree in law to any person who has not got a degree in the arts or sciences and who has not studied law for three years, and that in Scotland there is a law which prohibits the granting of the LL.B. degree except to persons who have a degree in arts or sciences and who have studied law for three years. That law provides that for persons who have studied only two years and who have no degree in arts or sciences the degree in law shall be that of L. B.

On motion, both resolutions were adopted.

On the recommendation of the Committee on Nominations, Francis Lynde Stetson, of New York, was elected Chairman, and Charles M. Hepburn, of Indiana, was elected Secretary-Treasurer, of the section for the ensuing year.

Notes and Personals

No more imposing entrance of a judicial body was ever devised than that of the Chief Justice and the eight Associate Justices of the Supreme Court into the Supreme Court chamber, a beautiful semicircular hall with a noble arched ceiling, in the center of the Capitol building, says the New York Sun under date of Washington, November 27th. Until the wings of the Capitol were completed this hall was the Senate chamber, and echoed in the olden time with the eloquence of Daniel Webster, Henry Clay, John Randolph, and John Tyler. It is now sacred to the use of the most august secular tribunal in the world. Across it runs a long platform with nine great armchairs; that of the Chief Justice, slightly differing from the rest, being in the middle. Before the bench is a wide, red-carpeted space for the lawyers, and beyond this are arranged around the semicircle red-cushioned benches for spectators. Behind the bench on which the justices sit is a huge screen, or reredos, with a door in the middle.

Everything in the hall is soberly sumptuous. The atmosphere is one of solemnity, as well it may be, for in this place of dignity history of many kinds has been made.

At 11 o'clock, when the court convenes, the lawyers are in waiting. To be a moment late would be the unpardonable sin. There are always spectators awaiting the court, sometimes anxious clients with tremendous interests involved. When the court is ready to appear, an official advances and gives three thundering raps, which sound like the crack of doom, and proclaims:

"The Supreme Court approaches."

At that all present rise, a door is opened by another functionary, and the long line of justices in their robes, headed by the Chief Justice, is seen majestically crossing the corridor from their robing room. When they reach the wide doors, respectfully held open for them, the crier announces:

"The Supreme Court of the United States."

Until recently the announcement was:

"The Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States."

But following the death of Chief Justice Fuller, and during the time when Associate Justice Harlan presided, the court was hailed merely as "the Supreme Court of the United States." That the new form was good enough for him was the decision of Chief Justice White when it was proposed to resume the old-time practice.

The justices, headed by the Chief Justice, upon entering, go behind the long screen, so that four of them may be on one side of the

Chief Justice and four on the other. Their entrance and place on the bench are strictly regulated by seniority of service. The Chief Justice enters from the door in the screen, held open for him. All mount the bench, and, standing for a moment, bow ceremoniously to the right and the left, to the lawyers and the spectators; all present bowing in return. The Chief Justice seats himself, the other justices then take their seats, the spectators sit, and the court crier proclaims:

"The Supreme Court of the United States is now in session."



By the great fire that destroyed one-third of the city of Bangor, the University of Maine College of Law lost its quarters in the Exchange Building, its library and equipment. Nearly all the students sustained heavy personal losses by the destruction of their lockers, boarding houses, fraternities, and homes.

When it became apparent that the Law School Building was in danger, eleven of the students, neglecting the opportunity of saving their personal property and that of their friends, endeavored to save the law library, the property of the state of Maine. They worked under very exhausting conditions until they were driven from the building by the flames, and until a number of them were obliged to jump from the second-story windows. Two of them were injured. Mr. J. K. Tertzag sustained a serious hurt in leaping from the building, and Mr. H. B. Westgate was overcome by the smoke and fainted, but was carried out of the building just in time. The eleven men were Frederick Prescott Adams, Cherryfield; Andrew Jackson Beck, Deer Isle; Everett Harlow Bowen, Bangor; William Henry Dwyer, Biddeford; Brad Dudley Harvey, Haverhill, Mass.; Leigh Irving Harvey, Bangor; William Daniel Owens, Lynn, Mass.; Howard Benjamin Rand, Haverhill, Mass.; Thomas Edward Sullivan, Lubec; Jacob Kevork Tertzag, Mamouret-ul-Aziz, Armenia; and Harry Bloch Westgate, Taunton, Mass.

Owing to the fact that the vault into which the books had been carried was dynamited and destroyed, it resulted that only five books were not entirely consumed by the fire. These books were abandoned by the insurance company, and given by Dean Walz to General Charles Hamlin, to Hon. L. C. Southard, of Boston, who had both made generous gifts to the law library, to Mr. J. K. Tertzag, and to Mr. H. B. Westgate, who had suffered seriously as the result of their

efforts to save the books, and one was retained by Dean Walz, to be placed in the new Law library, Maine Reports, vol. 28, the only state report saved, a souvenir of the great conflagration.

Immediately after the fire valuable gifts for the law library were made by the Boston University Law School, the Harvard Law School, and the John Marshall Law School, of Chicago. Gen. Thomas H. Hubbard, of New York, presented to the University a large check, which has been used towards the purchase of a set of Federal Cases. These valuable gifts, together with the insurance money and the special fire prices made for the renewal of their publications by the West Publishing Company, the Lawyer's Co-operative Publishing Company, and other firms, enabled Librarian R. K. Jones to secure a newer, better, and more fully equipped library than the one that had been destroyed by the fire.

The destruction of the Exchange Building and the apparent impossibility of finding another suitable location presented a problem of great, almost extreme, difficulty. Finally, however, an option was secured on the Isaac Merrill estate, at the corner of Union and Second streets, Bangor, a fine building and large lot, with room enough for the erection of additional halls when needed. On August 25th, at a special meeting, the trustees voted to purchase the estate. They were in part enabled to do this by the assurance of one of the leading citizens of the state of Maine that he had made provision in his will for a gift of \$20,000 to the University for the benefit of the College of Law.

The new building purchased is in one of the finest parts of the city of Bangor, in a quiet neighborhood, and within a few minutes walk from the Court House, the Y. M. C. A., the Postoffice, and the business section of the city.

The grounds, surrounding the building, occupy nearly a whole square. The lawn is beautiful and affords plenty of space for tennis courts. Fine elm trees surround the building and give the property an academic air.

The building itself is three stories high, a brick, granite, and slate structure. There are twelve rooms in the main part of the building, large, commodious, and well lighted. Those on the first floor will be used as recitation rooms, and are for the most part finished in mahogany. The reception hall, as well as the staircase leading to the second and third floors, are both all of mahogany. There are four large rooms on the second floor, to be devoted to library and office purposes, and four rooms on the top floor, one large enough to constitute a fine dormitory hall.

The new College of Law Building cost originally very nearly \$100,000, but it was obtained by the board of trustees, under the able leadership of its president, Hon. Wm.

T. Haines, LL. D., on particularly favorable terms. The annual cost to the University, including interest and other charges, will be less than the annual rental paid for the less adequate quarters occupied in the destroyed Exchange Building.

As a result of the fire the University has thus acquired for its College of Law a dignified and permanent home suitable for immediate requirements and future needs.



A peculiar and characteristic feature of the course offered at the Baltimore Law School, Baltimore, Maryland, known as the "Tutorial System," is now being experimented with by the faculty this year for the first time.

The Tutorial System is designed to meet the need of the students for individual instruction and guidance. It has seemed to the Faculty that if a law student could have, at the commencement of his studies, some one who had lately been over the same course with success, who would discover the student's personal needs and give him advice and assistance, it would unquestionably be of the very greatest advantage.

Such a tutor could explain to the young student unfamiliar and technical terms, could guide him to the proper use of text-books and reports, could explain to him what was hard to understand in the lectures given, could save him from many mistakes and pitfalls into which students are apt to fall, and enable him at once to make use of every expedient which the graduate found useful during his three years of training. If such graduate adviser could remain with the student all through his course, giving him continuous help, making note of his progress and his failures, and seeing to it, so far as possible, that the student took in and appreciated what the lecturer offered him, it seems to the Faculty that the good received by the student from his attendance at the school would be much more than doubled. Such graduates moreover, keeping in constant touch with the professors, would give them important information as to their success in reaching the students, and enable them to adapt their line of instruction, better than would be otherwise possible, to the needs of the student body.

In accordance with this view the Faculty have determined to divide the incoming class of 1914 into groups and place an "Associate," who will be a graduate of the class of 1911, over each group, to act as tutor to them during their whole course at the school.

These groups will meet twice a week, at the school, between 9 and 10:30 p. m., in rooms assigned for the purpose, and will then be quizzed by the "Associate" assigned to them. It will be the duty of the "Associate" to find out their difficulties, their needs, and their progress from week to week, to remove

their difficulties, to supply their needs so far as possible, and to aid their progress, and, whenever he deems it advisable, to consult as to these matters with the individual professors, the Secretary, or the Dean.

For the Intermediate and Senior Classes there will be during the coming year "Quiz Classes," held at the same hour, and twice a week as nearly as possible, upon certain important subjects. These will be presided over by "Associates" who have graduated from the school in recent years previous to 1911. These last-mentioned "Associates" will confine their work to one or two special subjects, but, so far as those subjects are concerned, will do the same kind of work as is above outlined to be done for the Junior Class by the "Associates" of the class of 1911.

The school has, at considerable expense, enlarged its quarters so as to provide room for the carrying out of the proposed plan.

By the adoption of this Tutorial System, it is confidently expected, not only that every student will have, without cost to himself, the advantage of a semiweekly Quiz Club, conducted by a regularly trained lawyer thoroughly familiar with the course, but also that there will be no student, whose need or position requires or justifies special help or hint, whose case will not be directly brought to the attention of those best qualified to give him the needed advice and assistance.



In the University of Pennsylvania a new course is offered in Office Practice, the work of which will consist in the performance by each student of a series of problems in practical office work, such as the practitioner is called upon to perform in the ordinary routine of his office. The paper and other work prepared by the student will be submitted in complete form, signatures, etc., and will then be examined by the assistant in charge of the course, Mr. Ed. W. Evans, who will examine and criticise the papers.

Conference with the students will be held at stated times, when practical advice will be given upon the preparation of office papers.

The Biddle Law Library of the University of Pennsylvania will begin the new year with a few changes. The growth of the state reports has necessitated new shelving, and, the stack room being already filled, two new sets of oak shelving have been placed in McMurtree Hall. These have been designed by the architects in accordance with the general decorative scheme of that hall. As McMurtree Hall is devoted to the English law, these shelves will be devoted to the current English Law Reports, thus completing the sets of English Reports in that room. The collections of foreign law have been placed in Sharswood Hall, with the exception of some of the case law. The very long set of the Patent Office Reports and Gazette have found

a place in McKean Hall, thus leaving space for the rapidly accumulating collections of Colonial Law.

During the year a very large number of the publications of English societies have been added to the shelves of the library. These represent the most exhaustive and scholarly researches of English lawyers and historians into the sources of the Law of England and the methods and instruments of its development. They contain matter of vital interest to the student of the common law, which is not to be found, in printed form, at least, anywhere else.

A very large number of early editions of treatises and reports, and many rare early books on the English law, have also been added to the library during the past year.

Although the Biddle Law Library is especially interested in collecting the sources of the law, in order that the original worker may be able to carry on in the library any special line of work he may desire, the library does not the less seek to be equally useful to the man who may need the latest case, and the last revised code or annual law. The American and English case and Statute Law has been kept up to date during the year, and all the new treatises that can claim to be of use to the student or working lawyer have been placed upon the shelves.



The Lebanon Law School, of Lebanon, Tenn., was created as a department of Cumberland University on the 9th day of January, 1847, or, to be more accurate, on that day the Board of Trustees took the first step, by resolution, looking to the establishment of a Law School. At various subsequent sittings of the Board the plan of organization was perfected, and in the month of October, 1847, the first term opened, with one professor and seven students present. Judge Abraham Caruthers was the professor. He resigned his seat upon the bench of the Supreme Court of Tennessee to accept the position. His name has passed into history as one of the ablest judges that ever presided in the courts of the state. He assailed and utterly discarded the old system of teaching by lectures, and insisted that the science of law should be taught like any other science—like mathematics, like chemistry.

The school was at once a success. In 1861, at the breaking out of the war, there were one hundred and eighty law students in attendance. Judge N. Green, Sr., then one of the Supreme Judges of the state, was called to assist Judge Caruthers in the conduct of the school in 1852. He resigned his position on the bench to do so. Shortly thereafter N. Green, Jr., was elected a professor; the prosperity of the school requiring the services of three instructors. These three gentlemen continued as the faculty until the breaking out of the Civil War in 1861. Judge Abra-

ham Caruthers died during the war. Judge N. Green, Sr., survived the war, and assisted his son (N. Green, Jr.) in the revival of the school, but died, at an advanced age and full of honors, in 1866. He was succeeded that year by Hon. Henry Cooper, and two years thereafter, Judge Cooper having resigned, Judge Robert L. Caruthers, who was for many years on the Supreme Bench of the state, was elected to fill the vacancy. He resigned in 1881 because of advancing years and feeble health, and Andrew B. Martin succeeded him, having been elected to the position in 1878. In 1902 the services of Judge W. C. Caldwell, who was then upon the Supreme Bench of the state, was secured as Lecturer upon Constitutional Law and Supreme Court Practice; and in 1910 Hon. E. B. Beard was induced to undertake the work of organizing the moot courts and conducting therein the trial of cases.

Judge Nathan Green, who now has been connected with the school for nearly sixty years, is still its Dean and continues to teach several subjects.



The New York University Law School, which has heretofore maintained a two-year course in its Day Division, inaugurated a three-year course in all of its divisions last September.

To college graduates the degree of J. D. (Doctor Juris) will be granted upon the completion of three years work of twelve hours per week. To non-college graduates the degree of LL. B. will be granted under the same conditions.

A fourth year is in contemplation, which will be based upon historical, analytical, and comparative jurisprudence, and for which the degree of D. C. L. will be granted.

Two new books by members of the Law Faculty make their appearance this fall, a treatise on Contracts by Dean Ashley, and Cases on Trusts (American Casebook Series) by Professor Kenneson.

Gordon Ireland, an instructor for two years past, retires from the faculty with the end of this year. Mr. Ireland will devote his entire time to practice.

Hon. Carl Foster, District Judge, residing at Bridgeport, Conn., has accepted the instructorship in Connecticut Practice. His course begins October 7, 1911, and will continue throughout the year.

Daniel Frederick Burnett, a graduate of Rutgers College and of this school, enters the faculty as an instructor. Mr. Burnett has lectured in the Newark Law School for the past two years, and has been engaged in practice in New Jersey for some years.

George S. Sprague, the Registrar of the University, will give instruction in the subject of Persons in the afternoon division this year.

During the last school year the Detroit College of Law inaugurated a day class for the first-year students. This class has proved to be a success and will be continued in the future. This year instruction in the first and second year subjects will therefore be given to day students.

William L. Carpenter has resumed his work in the law school and will teach the subject of Constitutional Law. Judge Carpenter was formerly a professor in the school, but by reason of his removal to Lansing on his election as Supreme Court Justice his work was interrupted. Judge Carpenter lately resigned from the Supreme Bench and is now a member of the firm of Stevenson, Carpenter & Butzel, one of the leading law firms of the state of Michigan.

The subject of Partnership will be taught in the Detroit College of Law this year by Seward L. Merriam, general counsel for the Pere Marquette Railroad. Mr. Merriam was formerly a teacher in the school, but was obliged to give up his work on account of professional engagements.

Ira W. Jayne has been appointed instructor in the subject of Agency. Mr. Jayne also teaches the subject of Oratory. During the coming year increased attention will be paid to this subject. Mr. Jayne was for a number of years one of the leading members of the debating team of the University of Michigan.

Paul B. Moody has been appointed assistant to Clarence A. Lightner, professor of Equity Jurisprudence. Mr. Moody will have charge of the day class and Mr. Lightner of the evening class in that subject.

The trustees of the law school have under serious consideration the question as to whether the evening course should be lengthened to four years. This question will probably be settled at the next meeting of the Board of Trustees.



The Law School of the State University of Oklahoma was admitted to membership in the Association of American Law Schools at the meeting held in Boston last August. Considerable credit is due to the University of Oklahoma for establishing from the outset its law school on the strictest modern lines, with high entrance requirements and high standards of work, and with an unusually able faculty.

Two new members have recently been added to the faculty, viz., Victor H. Kulp, an honor graduate of the University of Chicago in both its academic and law departments, and a practicing lawyer in the city of Chicago of some five years' experience; and Marion R. Kirkwood, of California, who graduated with honors from Leland Stanford University, having taken the prelegal course, and who attended the Harvard Law School for one year, and then completed his course in

law cum laude at the Leland Stanford University Law School.

The Legislature, at the special session which adjourned in March, 1911, made an appropriation of \$125,000 for a new law school building, and Dean Monnet has been conferring with Messrs. Shepley, Rutan & Coolidge, the official architects of the University, at Chicago, and after examining plans of all the best law schools in the country, and personally visiting many of them, has settled the preliminary sketches for the new building, which is to be one of the most convenient and complete law school buildings in the United States. An appropriation has also been made for new books and equipment. All three-year courses are being offered for the first time the coming year.

Dean Monnet occupied the chair of Mortgages in the University of Chicago Law School in the Summer Session of 1911, and was in attendance at the meeting of the Association of American Law Schools at Boston.

Professor J. B. Cheadle expects to take a degree at the University of Chicago Law School in one more summer; he having been in attendance there during the summer quarters of 1910, and again in 1911.

This law school has gained such a standing in the state, and Dean Monnet's work has been so thoroughly appreciated, that the State Board of Education at its session in May unanimously elected him Acting President of the University, and he is now performing the duties of that office. He retains the deanship of the Law School, however, and expects to get back wholly into the Law School work as quickly as possible, and will not leave the field of legal education.



The faculty of the Washington College of Law, Washington, D. C., has decided to present, during the school year 1911-12, a course of instruction in Patent and Trade-Mark Law. The lectures on Patent Law and Practice will be given by Hon. Cornelius O. Billings, First Assistant Commissioner of Patents.

The important provisions of the law and the leading decisions of the Commissioner, and of the Court of Appeals of the District of Columbia, relating to the prosecution of applications before the Patent Office, will be discussed.

Instructions will be given relative to the filing of applications for patents and their prosecution before the Patent Office, including the various appeals within the Office and to the Court of Appeals of the District of Columbia.

Interference practice before the Patent Office and the Court of Appeals will also be thoroughly studied.

The subject of design patents, the form of specification and claim, and the most impor-

tant decisions on this character of inventions, will be studied.

The lectures on the subject of Trade-Marks, Prints, and Labels, and Unfair Competition will be given by William L. Symons, LL. M., M. P. L., Assistant Examiner United States Patent Office.

The nature of a trade-mark and the history of the origin of this species of property will be considered, the general character of the trade-mark laws of other countries will be noticed, and the history of the several federal trade-mark laws of this country will be reviewed. The important provisions of the present trade-mark act will then be thoroughly studied. What may be registered under this act, and the correct form of application, will be gone into fully. Students will be required to prepare proper applications for registration of trade-marks. Opposition, cancellation, and interference practice will be studied. It will be the endeavor to familiarize the student thoroughly with every step in the prosecution of an application for registration of a trade-mark in the United States Patent Office.



Alex. H. R. Fraser, for many years librarian of the College of Law of Cornell University, died at his home in Ithaca, May 9, 1911.

Mr. Fraser was born at Port Hood, Cape Breton, Canada, on February 5, 1866. In 1892 he graduated from the Dalhousie Law School with the degree of LL. B. He had been librarian of the Cornell Law School since July 1, 1893.

The following tribute to Mr. Fraser's memory was written for the Sun by Professor Woodruff:

"In true nobility of character, it has never been my privilege to know personally a man superior to Mr. Fraser. Although he was not an alumnus of Cornell, no one of our graduates surpassed, and I doubt if few ever equalled, him in the measure of devotion and self-sacrifice he gave to the University day after day without rest during his eighteen years of service.

"To this service he brought a profound knowledge of legal bibliography, a wide culture in the humanities, and rare business acumen. Our law library, which is only second to that of Harvard among the law school libraries, is in its completeness a monument to his labors for Cornell.

"He was unsparing of his sincere sympathy, unusual intellectual gifts, and financial support to every worthy man or project that came to him for aid. Never was he weary of well-doing, even in his last days when his physical strength had waned to the vanishing."



John F. MacLane, who was formerly Dean of the College of Law of the University of Idaho, has been appointed to the District Bench at Boise; and the vacancy in the school has been filled by the appointment of Hon. Otis E. McCutcheon of Idaho Falls,

Idaho. Dean McCutcheon is a man of wide experience in Idaho practice. He has been a member of the State Senate, and was formerly a regent of the State University.

Professor Durfee, of the Law School Faculty, has been called to the University of Michigan, and his place has been filled by the appointment of Lyman P. Wilson, of Galesburg, Ill. Mr. Wilson is a graduate of the University of Chicago Law School, having received his academic degree at Knox College. He was serving his second term as City Attorney of Galesburg when appointed to the Associate Professorship at the University of Idaho.

One feature of the work of the University of Idaho Law School, which is being particularly emphasized by the school authorities, is the Practice Course, and to that end one of the class rooms has been remodeled so as to make a very presentable court room. Frank Moore, of Moscow, Idaho, a graduate of the University of Michigan Law School, and one of the best known attorneys in Northern Idaho, has charge of the practice work. Chas. H. Miller has been elected Secretary of this new and flourishing Law School.

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William R. Vance, Professor of Law at Yale University, has been elected Dean of the University of Minnesota Law School. Mr. Vance will not assume in full the duties of his new position until the fall of 1912. In the meanwhile he will continue to teach at the Yale Law School. Professor James Paige has been appointed by the Board of Regents of the University of Minnesota as acting Dean of the Law School during the absence of Mr. Vance.

Edward S. Thurston, formerly connected with the teaching forces of the University of Indiana Law School, the George Washington University Law School, and the University of Illinois Law School, has been elected Professor of Law in the University of Minnesota. Mr. Thurston, who has an established reputation as a law school instructor, is a graduate of the Harvard Law School, and was formerly connected with the legal firm of Strong & Cadwalader of New York City.

William G. Graves, of St. Paul, has also been added to the faculty of the University of Minnesota Law School. Mr. Graves was graduated from Harvard College in 1906, and from the Harvard Law School in 1909. For the past two years Mr. Graves has practiced law in St. Paul, being connected with the firm of How, Butler & Mitchell.

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The law building at Notre Dame, known as Sorin Hall, has been remodeled and improved to an extent that makes it seem almost new. It has been thoroughly modern-

ized in its appointments, and now ranks as an exceptionally comfortable and attractive college building. The work was done under the supervision of its artistic rector, Rev. Dr. Walter Lavin.

The Law Faculty of the University of Notre Dame remains practically unchanged for the current academic year. It comprises Dean William Hoynes and Judges Timothy E. Howard, G. A. Farabaugh, Andrew Anderson, and A. L. Hubbard, who, with Professor Callahan, constitute the teaching staff. Messrs. Vitus Jones and F. H. Wurzer also assist at times. There appears to be an increase year by year in the attendance of students in the Law Department. It is estimated that this year it will exceed 125.

On account of the press of outside duties and the fact that he is collecting data for a law book, Dean Hoynes, of the Law College at Notre Dame, has been constrained to curtail materially his work in the lecture rooms. This is now attended to in the main by the other members of the faculty.

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Charles H. Huberich and Wesley Newcomb Hohfeld, of Stanford University Law School, are on sabbatical leave for the present academic year. Mr. Huberich expects to spend the greater part of the year in Germany. Mr. Hohfeld is to give the course in Evidence at the University of Chicago Law School this fall, and will then go abroad for the remainder of the year. During the absence of these gentlemen Professor Howard L. Smith, of the University of Wisconsin, will teach at Stanford, giving the courses in Evidence, Equity I, Conflict of Laws, and Criminal Law.

A summer session of the Stanford University Law School was held for the first time last summer. The term was of eight weeks' duration, seven courses being offered by Professors Woodward, Cathcart, Huston, and Bingham. The enrollment was thirty, practically all being regular students in the law school. The conditions for summer work at Stanford are ideal, and both teachers and students were greatly pleased with the results of the experiment.

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Henry W. Ballantine, of San Francisco, has been elected as acting dean of the new law school established a few months ago as a department of the University of Montana at Missoula, Montana. Judge Claybaugh, of Helena, Montana, is the dean; but, as he does not expect to reside in Montana, a large part of the work in the school will fall on Mr. Ballantine. Mr. Ballantine is a graduate of the Harvard Law School. He has had considerable experience in teaching law in the Hastings College of Law in San Fran-

cisco, and in the Department of Jurisprudence of the University of California, at Berkeley, Cal. A couple of years ago he severed his connection with the University of California, in order to become one of the attorneys for the Northwestern Pacific Railroad, with headquarters at San Francisco. Mr. Ballantine's return to law school work will result in a distinct benefit to the cause of legal education, and the University of Montana is to be congratulated on securing his services in connection with the organization and management of its new law department.



Paul L. Martin, who has been secretary of the Creighton College of Law since 1907, has been made dean of that school.

Frank C. Crawford, who was absent last year in Europe on leave of absence, will deliver three lectures this year on "Oxford University," "Law Courts of Great Britain," and "Politics of England" to the students of the Law School.

The Law School quarters have been considerably enlarged. Two new rooms have been added, and the entire library so arranged as to give the students access to the shelves.

This year the "Model House," patterned after the national House of Representatives, will be conducted in the school, for the purpose of instructing the students in parliamentary law and in the method of passing laws. The "Model House" will be in charge of Professor John A. Bennewitz, who before studying law was private secretary to Senator Hitchcock from Nebraska.



Charles Noble Gregory, A. M., LL. D., has been elected to the deanship of the George Washington University Law School, in place of Ernest Lorenzen, resigned. Mr. Gregory has served seven years as associate dean of the College of Law, State University of Wisconsin, and ten years as dean of the College of Law of the State University of Iowa. He has also been president of the Association of American Law Schools and chairman of the Section of Legal Education of the American Bar Association. Mr. Gregory is a brother of S. S. Gregory, of Chicago, recently elected president of the American Bar Association.

Mr. H. Craig Jones, a graduate of Harvard Law School, 1906, takes the place of Mr. Mumma on the George Washington University Law School faculty. Mr. Mumma has resigned to take up practice in New York City. Mr. Jones has practiced at the Chicago bar and taught in the John Marshall Law School of that city.

An existing vacancy on the faculty of the George Washington University Law School has been filled by the appointment of Merton

L. Ferson as assistant professor. Mr. Ferson has taught Law and Political Science at the State University of Iowa, and has served for some years as librarian at the Law School.

Joseph Ryland Curl, for some time secretary of the George Washington University Law School, will teach one subject each semester this year, in addition to his duties as secretary.



George B. Eager, Jr., of Louisville, Ky., has been elected a member of the law faculty of the University of Virginia. Prior to two years ago the University of Virginia maintained only a two-year course, but recently a third class was added; the course now being three years. This made necessary an increase in the faculty, and resulted in Mr. Eager's appointment. Mr. Eager is a son of Rev. Dr. George B. Eager, professor of Biblical Introduction and Pastoral Duties at the Southern Baptist Theological Seminary, at Louisville. He was born at Danville, Va., where he attended the graded schools. In 1900 he went to Louisville, when his father moved to that city, and completed his studies in the graded schools. He was graduated from the Louisville Male High School with the class of 1906. In his senior year at the Louisville Male High School he won the oratorical medal presented by Judge Robert W. Bingham. He was valedictorian of his class. After leaving the High School, Mr. Eager attended the University of Virginia, where he was graduated with high honor in 1910. When he finished his studies at the University of Virginia, Mr. Eager took up the practice of law in Louisville, being associated with the firm of Bruce & Bullitt.



Willis Overton Harris, dean of the University of Louisville Law School, and one of the best known lawyers of Louisville, Ky., died at his home in Louisville on July 6, 1911. Judge Harris was born in 1847 in Virginia, where his father was a prosperous planter. At the opening of the Civil War he enlisted on the Confederate side. After the close of the war he went to Louisville, and began the practice of law in 1867. He was a member of the firm of Bullitt, Harris & Bullitt. For a number of years he was judge of the Chancery Court, and handed down decisions in some of the most famous cases in the history of the state.

Hon. Chas. B. Seymour, for many years an associate of Judge Harris in the Louisville Law School, has become dean of the faculty.

In the rearrangement of the subjects in the school, Real Property has been assigned to Leon P. Lewis. Robert M. Miller has become connected with the school as professor of Constitutional Law.

The following changes and additions have been made in St. John's University Law School, Toledo, Ohio: John S. Pratt will give the course in Pleading; Fred S. Kirtley will give the course in Bailments and Carriers; J. A. Barber, former Common Pleas Judge, will relieve Judge Doyle of most of the work in the course in Constitutional Law; a new course in Admiralty has been added, which will be given by Prof. George F. Wells, who also gives the course in Private Corporations; Prof. John M. Killits, judge of the U. S. Court at Toledo, will give a new course in Federal Practice and Procedure. In addition to the above, lecture courses on the subject of Bankruptcy by Fordyce Belford, and in the Law of Patents by George E. Kirk, will be given. Another noteworthy change is the extension of the practice court work, which is now required of all students in the law school.



W. Goodwin Williams has been elected to succeed R. L. Henry as professor of law in the Louisiana State University. Mr. Williams is a native of Richmond, Virginia. He received his preliminary education in the celebrated University School conducted by Colonel W. Gordon McCabe. He afterwards attended Richmond College, from which institution he graduated with the degrees of Bachelor of Arts and Master of Arts. He studied law for one year at Washington and Lee University under John Randolph Tucker, and later attended the Law School of the University of Virginia, where he completed the course leading to the degree of Bachelor of Laws. Since then he has done one year of post-graduate work at the University of Wisconsin, has studied one summer at the University of Marburg, Germany, and has devoted one year to the study of Jurisprudence at the University of Berlin. During the past three years he has taken graduate courses in Jurisprudence, Political Science, and Constitutional History at the University of California, and expects soon to receive the degree of Doctor of Philosophy from that institution.



No changes have been made in the faculty of the Law School of the University of Missouri for the current session. With the exception of a few new courses, the curriculum is the same as last year. A new course in Real Property has been added, as an elective course for seniors. The courses in Mortgages and Conflicts of Laws will be omitted this year, and courses in Domestic Relations and Criminal Procedure will be given instead.

During the spring months of the last session, E. W. Hinton gave a part of his time to the organization of a practice court in the Law School of the University of Chicago.

He had previously done a similar work at the University of Wisconsin. The practice court at the University of Missouri was organized by Professor Hinton eight years ago.

A new reading room has been added to the library of the Law Building, which will make it much more attractive to students. Separate lockers, for each of the students, will soon be installed.



The contract by which the Cincinnati Law School became a department of the University of Cincinnati expired some time ago. As the boards of the two institutions have not renewed this arrangement, the Cincinnati Law School is no longer a department of the University. This, however, will make no change whatever in the Cincinnati Law School. It has always maintained a distinct organization, having its own board of trustees, separate faculty, and its own property. Including its endowment funds, it has nearly a half million dollars worth of property. It owns the building where the school is located, and has a library of 12,000 volumes.

Eldon R. James, a member of the faculty, was given a leave of absence for a year for study. He will, on his return to the school, give all his time to teaching.

Benton S. Oppenheimer was elected instructor in the school, and will teach the subjects of Sales and Insurance.



During the coming year there has been added to the National University School of Law, Washington, D. C., a fourth-year course, which is intended to cover as broadly as possible the field of Federal Law, Practice, and Procedure. The course is divided into four groups as follows:

Group I. The Federal Judicial System: Organization and Jurisdiction of the Federal Courts; Federal Procedure and Practice.

Group II. Patent Law, Scope and Validity; Patent Practice; Patent Office Practice; Actions at Law in Patent Cases; Special Topics; Actions against U. S. in Patent Cases.

Group III. Admiralty; Bankruptcy.

Group IV. International Law; Land and Mining Laws; Jurisdiction and Practice Court of Claims.

The Patent Law faculty is entirely new, and is headed by Walter F. Rogers, who will be seconded by W. W. Dodge and Robert J. Fisher, and by Assistant Professors Osgood H. Dowell and Wm. B. Kerkam and Mr. Assistant Commissioner of Patents Frederick A. Tennant, who will lecture upon Patent Office Practice.



The Y. M. C. A. of Wilmington, Del., still maintains its course of instruction in law.

A. L. Turner, who for a number of years has had charge of the Educational Department of the Y. M. C. A., continues as the head of the law courses this year. No definite time is fixed in which the law course is to be completed, but the authorities of the school advise all students who are employed during the day to spread the whole course over a period of five years, acting on the theory that, if the best law schools expect a student to spend three years of study with full time devoted to it, it is fallacy for an evening school to attempt to fit men properly in two or three years, especially when they are otherwise occupied during the day.



The honor system, a system of self-government by the students, has prevailed at the University for many years. The written pledge of honor of a student that he has neither given nor received aid on an examination is accepted without question. A student proctor is appointed by the chancellor as supervisor over every six rooms in the dormitories for lower classmen, to aid the younger men in developing self-government and for giving advice. Each student also selects a member of the faculty as his special adviser, to whom he goes for all kinds of advice and counsel. Under this system of personal honor, and student and faculty advisers, the spirit of truth and honor, of self-reliance and strength of character, is developed, and the youth are returned to the state men.

—University of Georgia Bulletin.



The following are the changes in the Colorado School of Law, University of Colorado, since last year: Mr. Stuart Walling, LL. B., University of Michigan, 1881, has resigned as lecturer upon Equity Pleading and Practice, consequent upon his appointment by Gov. Shafroth as one of the judges of the new Colorado Court of Appeals. His position has not yet been filled.

Mr. Harry S. Silverstein, B. A., 1894, Yale, at present assistant district attorney for the city and county of Denver, Colorado, has been appointed lecturer on Criminal Procedure.

Mr. Carl C. Eckhardt, B. Ph., 1902, Ohio State, M. A., 1904, Michigan, Ph. D., 1908, Cornell, has been appointed instructor in English Constitutional History, in place of Mr. Joseph L. Kingsbury, B. A., Chicago, who has been given a leave of absence to study for his degree of Ph. D. in Chicago this year.



Chas. S. Potts, of the University of Texas, who in the past has given half of his time to the Law Department and the other half to the School of Government in the Academic

Department, has been transferred to the School of Government for his entire time, and Hon. R. E. Cofer, of Gainesville, Texas, has been elected as full professor in the University of Texas Law School. Mr. Cofer is a graduate of the Law Department of the University of Virginia, and has been at the bar for seventeen years, during which time he has served two terms in the Texas State Senate.

An innovation in the University of Texas this year is the offering of a course in Elementary Law to the students of the Academic and Engineering Departments.



Ernest G. Lorenzen, formerly dean of George Washington University Law School, has accepted a professorship at the University of Wisconsin Law School. Mr. Lorenzen spent last summer abroad.

Eugene A. Gilmore, of the University of Wisconsin Law School, has been elected secretary of the American Institute of Criminal Law and Criminology.

William U. Moore, of the University of Wisconsin Law School, was a member of the summer faculty of the Columbia Law School the past summer, teaching Bills and Notes.

Howard L. Smith has a leave of absence from the University of Wisconsin Law School for the present university year, and will teach in the Stanford University Law School.



Roger W. Cooley, well known throughout the law school world as a specialist on the use of law books, and to the legal profession at large as the author of Cooley's Briefs on Insurance and other law books, has accepted a professorship in the University of North Dakota Law School, and expects hereafter to devote his entire time to teaching law. During the past four years Mr. Cooley has had the distinction of lecturing and instructing in more than fifty different law schools.



William A. Finch, for many years professor of law at Cornell University, whose health failed near the close of last year, has been granted a leave of absence until September, 1912. George G. Bogert has been appointed acting assistant professor, and will have charge of Professor Finch's courses during the coming year.

Edward E. Willever has been appointed librarian, to succeed the late A. H. R. Fraser. Mr. Willever has for the past fourteen years been in charge of the library of the Edward Thompson Company, at Northport, L. I.



The Illinois College of Law, Chicago, Illinois, opened its fifteenth year on September

5th, with an increased enrollment over last year of forty per cent. The school maintains forenoon, afternoon, and night divisions. The largest gain in enrollment this year has been in the day school. The faculty is composed of some thirty teachers. Some of the teachers, especially in the day school, give their whole time, while others are resident lawyers, and keep up their practice along with their teaching work. But few changes in the faculty have taken place this season.

About one thousand new volumes have been added to the school library, including a full set of the National Reporter System and American Digest System.

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Joshua L. Johns resigned his chair as lecturer on Insurance and Public Corporations in the Chattanooga College of Law, necessitated by his removal from Chattanooga to Richland Center, Wisconsin, and entrance into partnership with Hon. L. H. Bancroft, Attorney General of the "Badger State."

Cridner W. Robinson, lecturer on Bailments, resigned his position on account of his removal to Vancouver, Washington.

It is probable that Hon. James B. Frazier, Ex Governor of Tennessee and former United States Senator, will be added to the faculty of the Chattanooga College of Law as professor of Constitutional Law.

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The Court of Appeals of New York, by the recent revision of the rules relative to admission to the bar, provides that no student entering upon the study of law on and after July 1, 1911, shall be admitted to the bar examination until after four years of study, except in case of graduates of a college, who may be admitted after three years of study. As a result of the adoption of this rule the Albany Law School has extended its course of study leading to the degree of LL. B. from two to three years. This change was entered upon at the commencement of the school year last September.

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J. Crawford Biggs, formerly professor in the University of North Carolina, and for the last five years a judge of the Superior Court of North Carolina, has resigned his position on the bench and accepted a professorship in law in Trinity College. Judge Biggs has behind him a brilliant record as student, teacher, attorney, Supreme Court Reporter, and Judge. With Dean Samuel F. Mordecai, Judge Biggs and R. P. Reade, the school is equipped with a faculty that will enable it to carry forward the great objects for which it was seven years ago established.

The Law School of the University of Mississippi entered upon its forty-ninth session last September, with good prospects. The former library building, recently supplanted by the handsome Carnegie structure, will henceforth be devoted exclusively to the law department, and will afford it comfortable and convenient quarters. It will be known as "Lamar Hall," in honor of that prince of teachers, the lamented Justice Lucius Q. C. Lamar, who occupied the chair of Governmental Science and Law in the University of Mississippi from 1867 to 1870.

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In the University of Maryland Law School this season, Hon. Carroll T. Bond, one of the judges of the Supreme Bench of Baltimore City, will lecture to the intermediate class on the Law of Executors and Administrators, in place of Hon. Henry Stockbridge, who will continue to lecture to the senior class on International Law and Conflict of Laws.

Samuel Want, Esq., of the class of 1908, has been engaged by the faculty as adviser to the students. Mr. Want will also have general direction of the library, will instruct students in the use of law books, and give elective courses upon special topics.

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H. Bovee Schermerhorn has resigned the chair of Pleading and Torts in the Temple University Law School, of Philadelphia, and has gone abroad. His place on the faculty has been taken by Walter C. Douglas, Assistant United States Attorney for the District of Pennsylvania, who will teach the same branches as were formerly taught by Mr. Schermerhorn. The Law School is now established in its new quarters in the Wilson Building, Sixteenth and Sanson Streets, a very central location, in Philadelphia.

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Walter H. Evans, former secretary of the Law Department, University of Oregon, and Assistant United States District Attorney, will succeed Harrison G. Platt, A. B., of the Oregon Bar, as instructor in Negotiable Instruments in the University of Oregon Law School.

T. Walter Gillard, former assistant librarian at the Multnomah Law Library, and senior in the Law Department of the University of Oregon, succeeds Professor Evans as secretary.

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Jacob M. Dickinson, formerly president of the American Bar Association and formerly Secretary of War in the Cabinet of President Taft, has been elected to a professorship

in the Law Department of Vanderbilt University at Nashville, Tenn. Mr. Dickinson will teach Federal Jurisdiction and Procedure.

Hon. Wm. K. McAlister, for many years judge in the Supreme Court of the state of Tennessee, has also been elected to the faculty of this school. Judge McAlister will teach the subjects of Torts, Public Corporations, Private Corporations, and Evidence.



E. D. Armour, K. C., D. C. L., who for many years has been lecturing on the subjects of Constitutional Law and Real Property at Osgoode Hall, Toronto, Canada, resigned his position on the faculty last summer, and his place has been taken by Shirley Denison, K. C., of Toronto.

An addition has been made to the teaching staff at Osgoode Hall by the appointment of a demonstrator in practical work; i. e., drawing pleadings, documents, etc. The new appointee is C. C. Robinson, Barrister at Law, of Toronto, Canada.



Archibald H. Throckmorton, who for the past nine years has been the dean of the College of Law of Central University of Kentucky, resigned that position last September to accept a professorship in the University of Indiana Law School.

A. V. Williams of Detroit, Mich., has been elected dean of the College of Law of Central University, at Danville, Ky., to succeed Mr. Throckmorton. Mr. Williams is a graduate of both the Academic and Law Departments of the University of Michigan, and for the past four years has been engaged in practice in Detroit.



The Omaha School of Law, for over twenty years maintained as the only independent night law school in the state of Nebraska, has affiliated with the University of Omaha. During the present year the school will continue, as heretofore, under the direction of the secretary, H. A. Whipple. Next year the school will be fully incorporated with the university plan as the Law Department, and will be under the supervision of Hon. Howard Kennedy, one of the chief movers in the greater university plan, who will be dean of the Law Department.



The Atlanta Law School is fortunate in being able to announce the following welcome additions to its corps of instructors: Samuel N. Evins, LL. B., Harvard University, who will deliver a course of lectures on the Doctrine of Ultra Vires; Hugh Dorsey, LL. B., University of Georgia, Solicitor General of the Atlanta Circuit, who will deliver lectures

on "Pleadings and Practice of Criminal Law"; H. A. Alexander, M. A., LL. B., University of Virginia, who will be in charge of the classes on Bills and Notes and Contracts; W. W. Tindall, B. A., LL. B., Emory College, and an alumnus of the Atlanta Law School, who will be in charge of the classes in Partnership and Agency; Harrison Jones, B. A., LL. B., University of Michigan, on Domestic Relations.



The entering class last September at the Law School of Western Reserve University, Cleveland, Ohio, was the first under the new requirements for admission. Candidates must now either have a degree from an approved college or must be seniors in the undergraduate department who have completed at least three years of the six-year combined course in Arts and Law. While the freshman class is considerably smaller than usual, the change in requirements did not cause so large a decrease as had been anticipated. The faculty at Western Reserve University are confident that much better work can be done with small classes composed of mature and well-trained men.



R. A. Daly, of Chicago, will continue his work this season among the law schools, lecturing and giving special courses of instruction and demonstrations as to the proper use of law books. During the early part of the winter Mr. Daly expects to visit law schools in the Central West, and in February, March, and April will devote his time to the large law schools in the Eastern states.



Washington and Lee University Law School, of Lexington, Va., opened the season with an enrollment of nearly 200 students. There is no change in the membership of the faculty this year. Last July and August, for the first time in the history of the University, summer sessions were held by the Law School. While the attendance was small, the plan was a success, and the indications are that another year the number of students attending the summer school will be much larger.



Gavin W. Craig, for a number of years secretary and professor of law in the Southern California University Law School, has been elected to the bench of the Superior Court, Los Angeles, Cal. Judge Craig still retains his connection with the law school, however, as instructor on the subjects of Elementary Law, Suretyship, and Water Rights; also as a member of the board of control of the school.

The only change in the teaching force in Northwestern University Law School since last spring is the addition to the faculty of a number of special lecturers in Illinois law. Special courses in this subject have been added to the curriculum as supplemental courses for students expecting to practice in Illinois. The names of the new members of the faculty are: Cecil Barnes, Allan John Carter, David Owen Dunbar, James Jackson Forstall, William Browne Hale, Elmer Martin Liessman, Rex Mackenzie, Robert Wyness Millar, and Stanley Rich.



Chas. E. Hogg, dean of the University of West Virginia Law School, has nearly ready for publication a new text-book on Common-Law Pleading, designed particularly to meet the wants of the student. It is believed by those who have examined the manuscript that the book will prove very useful to the student of Common-Law Pleading. The publishers of the new work have not been announced.



Melville M. Bigelow has resigned from the deanship of the Boston University Law School. Mr. Bigelow has retained his connection with the University as professor of law. As yet no one has been appointed to succeed Mr. Bigelow to the deanship.

Alonzo R. Weed, a member of the board of trustees of the Boston University, has been selected to occupy the position of acting dean of the Law School for the ensuing year.



A new law school has been organized in Des Moines, Iowa. The members of the faculty are Laurence De Graff, C. D. Burkheimer, John H. Blair, Jos. A. Dyer, John Holmes,

J. M. Parsons, Chas. W. Lyons, and Benjamin F. Williams, secretary. The school is known as the Des Moines College of Law. The first year's work was begun on September 25th.



Austin W. Scott, formerly assistant professor of law at Harvard University, has been elected dean of the University of Iowa Law School. Mr. Scott will remain at the University of Iowa for the seasons of 1911-12, at the end of which it is possible he may return to the Harvard Law School.



Chester G. Vernier has resigned from the faculty of the Indiana University Law School, at Bloomington, Indiana, to accept a similar position in the Law School of the University of Illinois.



Robert L. Henry, professor of law in Louisiana State University has been appointed to a similar position in the University of Illinois. Mr. Henry began work at the latter institution in September.



The Chicago Law School has added to its faculty for the present academic year Professor Howard F. Bishop, who has been eight years a tutor at Yale University, and is at present assistant city attorney of Chicago.



Sir Frederick Pollock, the English jurist, gave a series of special lectures on the "Genius of the Common Law" at the Columbia University Law School in October.

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The American Law School Review

An Intercollegiate Law Journal

A. F. MASON, Editor

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The Key-Number Annotation

Is a Reference to the Topic and Section
in the

American Digest Classification (Key-Number System)

Under which all prior cases in point have been placed
and under which all future cases in point will be placed

Thus:

**3. STATUTES (§ 188*)—CONSTRUCTION — STAT-
UTORY PHRASES.**

The statutory meaning of a word or phrase
must be determined from the purpose for which
the statute was enacted.

In the above example, "§ 188" under "Statutes" is the Key-Number. In every volume of the American Digest, Key-Number Series, as well as in the Decennial and in the late Reporter Digests and Indexes, § 188 under Statutes relates to that same point—the construction of a statutory phrase

All the decisions you need on that point are filed away in the depository which is unlocked by this key, viz., "Statutes, § 188"



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No. 2

American Reverence for Law

By ISAAC FRANKLIN RUSSELL

Chief Justice, Court of Special Sessions of the City of New York

IN COUNTRIES under the reign of law the most striking feature of public government is the pre-eminence of the judiciary. It has been said that the three governmental departments, the legislative, the judicial, and the executive, are, or ought to be, equal, co-ordinate, and independent. Still many qualifications of this broad principle appear in our modern life. The unity of the executive office gives a brilliant and conspicuous position to the President of the United States, classifying him with kings and emperors, and dwarfing into personal insignificance and hiding in obscurity the many Senators and Judges who warm in the other departments of the public service. The legislative chamber, inheriting the traditions of parliamentary omnipotence, has the glory of the initiative and the power which comes from holding the purse strings of the nation. The German Emperor once said: "I would have a royal, not a parliamentary, army." This royal army brings the Kaiser always to the center

of the stage, and makes the war lord, if not the most powerful, certainly the most dangerous and absorbingly interesting, personage in Europe. The judiciary in Germany, instead of reaching a plane of equality with the Reichstag and the Kaiserate, is rather an appendage to the executive.

In England, so far is the legislative authority above the executive that the legislature may be said to appoint the Cabinet; and, as the Cabinet officers sit in Parliament, we may fairly say that the high officers of administration are merely an executive committee of the House of Commons. The great measures of legislation at Westminster, which agitate the empire and attract attention beyond the seas, are bills framed by members of the ministry, on whom the responsibilities of leadership rest. Thus in England the executive legislates. In another sense the parliamentary majority in the Commons controls the judiciary. This is done through the Lord Chancellor, by whom judicial honors and prefer-

ment are dispensed, while the Lord Chancellor himself comes into office and goes out with his political friends who control the majority in the Commons and thus rule the empire.

In the United States, however, the judiciary occupies a much more exalted place, for legislative acts are subject to be set aside for unconstitutionality by judicial determination. With us the people only is sovereign. There is no irresponsible authority under the American constitutional system. The legislature is not omnipotent. Only the judiciary in the court of last resort can never err. This pre-eminence of the judiciary did not escape the notice of Jefferson, who never accepted Chief Justice Marshall's statement of the law, and always trembled in the strong shadow cast by the Supreme Court under that great jurist.

Finally, the judiciary has the power of practical legislation. The vast bulk of our statutes is simply a parliamentary restatement of pre-existing rules evolved originally through adjudication. The Constitution itself, though written, has been steadily developed through the progressive decisions of the United States Supreme Court, which have added new sections in spirit without any literal extension of the instrument, and have silenced other sections which still hold their place in the body of the document. This marvelous function of judicial legislation is not a usurpation by the court, but is simply the exercise of authority constitutionally granted.

From time to time our Supreme Court has occasionally refused to take cognizance of political and economic matters, referring them with great modesty to the President as the head of the political department, or deferring, on questions of the rate of taxation and finan-

cial policy generally, to the ultimate wisdom of Congress. Thus our whole diplomatic policy and our expanding empire, as well as our domestic institutions, our tariffs and our excises, our currency and our taxes, have been submitted for final determination to the judgment of the courts.

The judiciary is, therefore, the ultimate and transcendent authority in countries which have written constitutions. In America, the bench is loftier and mightier than anywhere else on earth; and on the honor, purity, and independence of our judges rest all of our rights to property and all of our liberties as citizens.

In America we all reverence the law. Clergymen, whose philosophies and theologies have so far failed to redeem the world, turn to the law as the way of salvation. The capitalist looks to the courts as the bulwark of his millions, seeking their authority to redress his grievances and protect his investments. The idealist and world reformer needs only, as he thinks, the help of the public purse and the law's strong arm to reinforce his own bright mind and infallible reason in building and governing the Utopia of his dreams. The son of toil, exasperated by the harangues of the demagogue, imagines that he is growing poorer every day, and that the law has robbed him of his rightful inheritance. He seems to think that wealth can be created by statute, and values determined by legislative enactment. The irreconcilable Socialist, in bitter hatred of the existing order, plans to tax capital unjustly, but finds that he has only succeeded in banishing capitalists.

Law is thus exposed to many perils, particularly in a democracy, where the underlying doctrine is that it is safe to trust the people. We hear this announce-

ed by politicians just before election. But it is not always true. The poor can no more be safely trusted with irresponsible power than the rich. In a moment of temptation they resort to spoliative legislation in disregard of the constitutional rights of property. Zealous for the interests of laborers as a class, they deny the right of toilers to choose their employment and accept their wages under the guaranties of liberty and personal security that are contained in the fundamental law.

An elective judiciary finds its only justification in the assumption that it is safe to trust the people. Real merit and sound learning, the sufficient equipment for judicial service, are seldom found in the midst of the boisterous self-assertion that dominates political conventions. To have survived this peril means much for the stability of the American commonwealth.

There is more real reverence for law in America than anywhere else in the world. There is awe of power under the military systems of Europe, and much real liberty in England, where Parliament is omnipotent. But only in America is the judiciary a really independent department of government, co-ordinate with the legislative and executive arms of public authority. For here

we have invested the judiciary with the unique prerogative of interpreting the Constitution and invalidating executive and legislative encroachments on the reserved rights of the people. Generous salary, a long official term, removal only by impeachment and conviction by a two-thirds vote, have given to our judges an intrepidity in the discharge of their duties which has been the mainstay of liberty in times of trial and popular excitement.

To destroy the independence of the judges and their fearlessness in the discharge of their solemn duties would mark the epoch of returning despotism. When judicial honors are regarded as the just reward of service in partisan politics, when judges look tremblingly to the executive, in dread of the resentment of a powerful politician, or fawningly appeal to him for place and pay, when sittings and appointments, promotion to the metropolitan bench, or exile to the mountain solitudes of the interior, reward the subservient and punish the disobedient, then, indeed, are our liberties in peril. It is to real Americans, who have learned to understand and cherish the free political institutions of Anglo-Saxons, and are ever jealous of their own liberties, that we can safely appeal when dangers arise that menace our judiciary and its independence.

Letters from a Lawyer to His Son

By **ARTHUR M. HARRIS**
Of the Seattle Bar

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[A condensation and compilation of letters from a lawyer to his son who is about to enter upon the practice of the law. The salutations and matters of private interest are eliminated.]

Letter I

YOUR mother and Peggy are leaving here in a few days to attend your graduation exercises. I am sorry that I cannot accompany them, but Martin's case will be heard in the federal court on that date, and postponement is almost impossible. You will remember that is the case which you assisted me in briefing last winter. You labored nobly for the success of the cause, but I found on looking over your citations that some of them bore as much relationship to the actual issue in this case as a pair of handcuffs do to a finger ring. I am not scolding. I want you to feel on your graduation from law school that your legal education in many respects is but beginning, instead of being completed. Remember, son, it takes a bricklayer five years to get his master's ticket, and I don't want you to think that three years in a law school suffices to master either the technique or the theory of the law.

I am not attempting to disparage the law school. I think, on the whole, it has been an advantage for you to attend one. When I finished the A. B. course at Hotchkins—now some few years ago—there was no law school for me to graduate to; in fact, at that time, there were but one or two law

schools in the United States, and their courses were brief and pretty crude. Those were the days when many of the old-time lawyers were writing their pleadings in longhand. A man then could not sit down and rattle off a complaint on the typewriter, or recline in a swivel chair and dictate his pleadings to a stenographer. Still, the old system had its advantages and its triumphs, and some grand men honored and adorned it.

I am glad that you were able to attend law school; but, for all that, I don't want you to come away with the idea that you are infinitely superior to the office-bred lawyer. By an office-bred lawyer, I mean one who goes to work in a law office and does his studying under the direction of his employer. Broadly speaking, this is still the English method of making lawyers, and you know that the courts of this country lend a very willing and attentive ear to the decisions of the men who are made under this system. In England, a young man is articled to a solicitor for a number of years, usually five. He employs himself in the office, reads law as prescribed, and takes periodic examinations given by the local bar association—usually a county institution. The practical and immediate benefit of this

system of legal training is that, on his admission to the bar, the young lawyer is familiar with the everyday routine of the courts. He knows how to get his pleadings into court, and understands pretty well how to steer his cause through the many devious shoals and shallows that threaten to strand even the best case before it arrives in the snug harbor of decision and judgment. He can do this and does not have to ask the clerk, the bailiff, or the nearest attorney where and how he shall file certain papers. In the law school for some reason or other, while you may have had an excellent Moot Court, still, when you have first opened your office and a man rushes in hollering for an attachment or a garnishment or some other immediate legal action, you will suffer a sensation that is cousin-germane to heart failure. Why? Because, although you have a pretty fair understanding of the meaning of those terms, you have never yet actually and really attached a merchant's stock or garnished the wages of a real live working man. That is where that rude rough boy that went through Jennings's office and got his law between two spoons of soup has the advantage. Of course, you will get that knowledge yourself in due time, but I have seen some horrible messes made during the period of incubation.

You personally will be all right because you have obtained that experience in my office; but, if you had not had a lawyer for a father, I would have advised you to spend your odd time while at school in running errands for some practicing attorney.

Look at Tom Wilkins. Tom came to me from a law school, when you were still a kidling, uncertain whether your life vocation was to be that of a policeman's, a field marshal's or a pirate's.

Wilkins was a good bright boy and has since achieved as much success as a man in our profession may reasonably expect. One afternoon, when I returned from court, I found Wilkins immersed in a sea of volumes and looking as perplexed as a girl with two desirable suitors. When I soothed him into coherency, I found that old Ben, the colored janitor, had been in about a trunk some colored lady was threatening to hold for rent, and poor Wilkins was looking in the encyclopedia for a way of salvation for Ben's impedimenta. While he was talking, I looked out of the window, and there was Ben driving by in his little old rickety wagon, with the trunk, and on the seat beside him was the office boy that worked for Lawyer Bloom. I spared Tom the sight, as he was a sensitive sort of a chap, and I did not want to discourage him, for I knew he had the insides of a good man.

Dean Maple told me on his visit here last summer that he runs a little informal postgraduate course for the young Marshalls he has licensed to practice. He tells me that it is a quiet day in his office at the law school if he is not called up at least half a dozen times by the boys downtown, looking for information that he thought he had drilled into their heads when they were freshmen in the law school. Some of those questions are certainly funny. The point is that most of the inquiries that are hurled over the telephone with voices of the greatest anxiety and concern do not involve any legal question at all, but are things the use of a little common or garden reasoning would have solved.

I am not prepared to say that the law is entirely a matter of common sense. I do not hesitate to say, though, that, underlying every decision that successfully stands the fire of a generation of

lawyers, there is a good, substantial stratum of common sense. Lawyers we must have, for the decisions of the country have accumulated and reached so great a volume that we must have trained men to search them out and apply them to a given set of facts. In the ordinary business that comes to a young lawyer's office, however, if he will first determine what is right between man and man and what in reason is the speediest and cheapest way of securing those rights, the young practitioner will not greatly err. I do not think that, of the cases you will get your first year, many of them will run much over a hundred thousand dollars.

I must not run on in this strain too long, or you will accuse me of preaching.

Letter II

I MUST first congratulate you very heartily on winning the Blackstone prize for the best thesis. News of that kind, you know, makes your father feel that perhaps all the money spent on your education had not been wasted. It shows me, too, that you have done some work; how much, I will not venture to compute, but there is a *prima facie* case that you did some. I have quietly observed one way and another that a law school is a place where you can do a lot of work, and also a place where a man can slide through pretty easily if he will. Last fall when I called on you at your chapter house, I found one young man with his feet on the mantelpiece reading one of Mr. Chambers' stories, probably as a relaxation from the severe mental labor occasioned by his too strenuous devotion to his law studies. The rest of the young men, so my friend of the light literature informed me, were up-

stairs in their rooms studying. It was a rather warm afternoon, and the world of outdoors looked pretty inviting, so I mentally gave the studious youths cloistered in their bedrooms great credit for their industry. While we were talking, waiting for you to come—you were at the law library, you remember telling me—the telephone bell rang, and my friend went to the foot of the stairs and called up for one of the diligent students. He called once loud; he called twice very loud. No response. With a rather quizzical glance at me, he turned and went up stairs. There was a slight bustle, strangely suggestive of a man being dragged from a bed, while a voice rose in querulous complaint, "Aw, can't you let a fellow sleep?" A few seconds later a tousled-haired youth stamped heavily down to the telephone, muffled in a bath robe. From the snorts, sneezes, and giggles that came from the telephone later, I judged that he was not talking to one of the law professors.

Now I am not saying that some of your good brethren were not studying, and if they were snoozing, why, that is all right. The afternoon siesta is a well-tryed and approved custom and has been in vogue in Latin countries for many centuries. It has the disadvantage, though, like many other good things, of creeping on a man as a habit, and gentlemen, who have indulged too strongly in the postprandial nap at school, often unconsciously relapse into it in their offices. Poverty is a good thing for a young lawyer if it prevents him the luxury of an office couch.

There is one thing I cannot scold you about in your college career; you have not been a grind. Your mother and Aunt Emily were very much concerned at one time that you would take your work too seriously and that by too dili-

gent application to the books you would make yourself ill. I didn't take the trouble to allay their fears, as I knew you were looking after that end of the proposition very nicely. Mother was much relieved when you came home at Christmas without the pale, spiritual look of a studious anchorite. I didn't say anything, but your appearance suggested that you got plenty of relaxation. Well, I would rather give you spending money than pay doctor's bills.

Now the college grind is the recipient of a whole lot of abuse, some of which is merited and some of which is a gratuitous and unsolicited insult. I have observed, my son, that the grind is just a creature who has become habituated to work. Without his books he would be positively unhappy, and, mark me, he has a habit of work which he will carry into the world, and which will insure him, if not a long life, at least a full one, and that, as I have told you on divers and sundry occasions, is your father's idea of living.

We had a fellow at Hotchkins who was in the grind category. He was studying to be a teacher. I got to know him pretty well one way and another, and a more charming fellow I have seldom met. I learned, directly and indirectly, that the poor chap's eyes had gone back on him during his school course, and he had to have a friend come and read the lessons to him for two bits an hour. To pay for this and his other expenses, he was compelled to run around town with a patent carpet sweeper, cleaning carpets. This was not all, for, besides supporting himself, he was helping his sister through the state normal school. Right then I decided that, if you scratch a grind, you will often make a hero bleed. The grinds I have met have usually been big-

boned, big-handed chaps who did not have to look in the dictionary for the meaning of the word "chores." More than one of the species has gone into first-class law offices from the reputation he made at school.

Now, my boy, I want to say that I have been mightily pleased with your whole conduct at school. This is in the nature of an unsolicited testimonial which you may use for publication or not. In witness whereof I am enclosing a small check, large enough, however, to enable you to bid a fitting adieu to academic scenes and companions. I thought it was very fine of you to lay aside athletics, except in a minor key, when you graduated to the law department. You showed good common sense in paying more attention to debate and public speaking. When I heard you in the Rochester debate, I was very well pleased. I did not flatter myself that another Webster was come to triumph, but I was glad to see you get your words out without a cross between a sneeze and strangulation of the windpipe at every period. There is an opinion, and I have heard it even from professors of public speaking, that eloquence has but little place at the bar. This is entirely wrong. There may, it is true, be fewer occasions for "plucking the bird of Freedom," and "rhetorically waving the good old stars and stripes around your engloried head," but there never was a greater need than now for eloquence in its purest and most noble form at the bar.

You have only to think how closely the courts are interwoven with the everyday affairs of the people, how potent with consequences is even the shortest decision, to realize what a need there is for the clear-seeing and clear-speaking man. Some of the most en-

And he made a good deal of money

note

Quotation

during orations, as ^{diary} your old Latin books will show, were made in matters of law. Eloquence is the forcible expression of truth, and as such should be sedulously sought after and wooed by the legal practitioner. Many, who say that the bar is no field for eloquence, are men whose vocabularies are limited to the small affairs of every day and who drone through their cases in court, over a rickety chain of "ahs" and "ehs." As to the matter of debate, you will appreciate what training you have obtained in this line when some little fire-eating ferret of a lawyer has you on the grill before an interested judge and an amused jury, and spends half of his time trying his case and the other half abusing you. Remember, a lawsuit is a fight, and the quick-thinking, accurately-speaking and level-headed man is the one who will win, and without resorting to mayhem to do it, either.

Letter III

I SEE that your graduating class is going to number about fifty young fellows. When you remember that hundreds of other law schools all over the country will disgorge as many as your school, if not more, you can see that there is not going to be a dearth of legal advice in this country, for a while at any rate.

Now I am not going to say that we shall have more lawyers than we need, or that all these young men are following the wrong line in rushing into this business. Still it seems a pity, when so much of this broad land is crying for brains and industry to come and develop its hidden treasures, and where there is room and a good substantial living in developing our mineral and agricultural resources, that youngsters should flock into a game which they can't beat for

years and which assures them at best only a very ordinary living.

I blame the good times, partly, for the great increase in the number of men following all the professions. It is easier now than it was some years ago for a man to scratch through school and get his license to tinker up bodies or patch up injured rights. If things were to pinch up hard, something like the memorable times of '93, you would see a marked falling off in the number of students attending college and in the number of professional graduates. Necessity will simply drag them back and keep them on the farm. It will not be a question of how nicely and smoothly and genteelly (horrible word, that last) I can get through life, but where can I get something to eat. In the end this would be better for everybody. *Why did not stop on the way*

The Log-Cabin-to-White-House style of book, too, is responsible for lots of young lawyers. Law making in this Republic seems to have gravitated into the hands of the law expositors; consequently every young Blackstone thinks he will have the Presidential chair under his wing if he can but get admitted to the Bar. He is doomed to have an interesting time finding out what the relation of law and politics is. He frequently winds up as a member of some Good Government League at two dollars per annum and a semi-annual lunch. That is all right. Every citizen should help the cause of good government. But what a curious fact it is that the total membership of such bodies is almost entirely composed of young lawyers! *Now you see* Why this feverish thirst for reform that burns unquenchably in the young lawyer's bosom? Truly, a visitor from Mars would think the followers of the legal profession were the only patriots in the country; but the wise old practition-

er allows the upper lid of his left eye to drop slyly and coyly down upon the under lid. He knows; for, like the measles, he has had it, too. Those members of reform bodies who are not lawyers are young doctors, so, if there is any credit due for super-patriotism, we must include our learned brothers of the scalpel and lancet.

I have known lots—yes, I use the term advisedly—lots of young fellows who graduated into the different law schools from their A. B. courses just because they did not like to break off with dear old Alma Mater and had the means to keep up the giddy whirl a while longer. Taking academic courses, with some fellows, has developed into a harmless but rather expensive mania. At Hotchkins we had a nice bright sort of a chap who took just eight years to get his bachelor's degree in arts. Jim simply hated the idea of leaving the campus. He had become an institution himself, like the cane rush or the plug hat fight on Junior Day. He was an oracle on all traditions, ancient and modern, and was generally supposed to have been on familiar terms with some of the first graduates of the old school. Poor Jim was the most depressed chap I ever saw when they finally ran him to earth and tagged him "A. B." He explained to me that life seemed to hold forth no hope; that there was nothing useful he could do any more to help his fellow men. What would become of the traditions? What would befall the unwritten history of the school, when his faithful and receptive breast should no longer bear it around Jennings Field or on the Lilac Walk? Who would fill his particular niche with the girls; with the honor societies; with the old grads who were wont to come to see the campus, but really came to swap yarns with

Jim? I agreed with him that the outlook was certainly gloomy, and that he had been unduly rash in crowding his course into eight short years. Now if we had had a graduate school of any kind in those days, old Jim would have crowded right in for another three years of anything—Pharmacy, Medicine, Dentistry or Law.

Out of your class of fifty chaps, you will probably not have one born lawyer. You will have several men like yourself—raised as it were in the law atmosphere and with a good bias towards the law, and all of such men will be successful lawyers. But that peculiar genius for the law, the clear, penetrating insight into underlying principles, the readiness and ability to expound what the clear mind sees—that nature is found but seldom; and when it does exist, it usually makes the man more of a law student than a practitioner. This was the rare and infrequent type to which Blackstone belonged. I often think with great interest of the young Blackstone hard at work in his chambers in Temple Court, while upstairs lovable Goldsmith and his boon companions could be heard with wit and laughter passing the evening—and the flowing bowl. Goldsmith upstairs and Blackstone downstairs; neither probably having much to say to the other, but both, in their own ways, perpetuating their names and forever adorning the noble field of English letters.

Now I said you were not the born lawyer. I will not quite so rashly put myself on record. It is possible that in the quietness of your post-collegiate life you will some day be reading the old decisions and the old texts, and a sudden realization may come of the wonder, the magnitude, the glory, the mystery, and the grandeur of English law. You will begin to read with a new feeling, a new

*Get the
"Giant"
but he
came up
hard at it.*

interest. You may have set yourself down a legal hack, looking for crannies and loopholes to gain a catch-penny advantage of your opponent, and may rise a philosopher, an Austin, a Blackstone. I shall esteem you more in that event than if you were making fifty thousand dollars a year in active practice, because the work of an Austin shall live and must live when the myriad names of trumpet-toned criminal lawyers shall have ebbed into what Carlyle fittingly calls the "Eternal Silences."

I have an unsatisfactory feeling that I have been indulging in day dreams. Well, I won't insist on your being a philosopher—a legal philosopher. I shall be quite content if you are an honest and upright lawyer, who has an old-fashioned regard for the worth of his word.

Letter IV

YOU do not want to feel discouraged at the number of competitors you will have in your line of activity. What I said in my last letter was by way of inquiring into the reasons young men have for making the law their life's occupation. You will not find lawyers quite as thick as you think. At any rate, the young doctor and the young dentist find themselves pretty much in the same box; so, if there is any consolation in the companionship of misery, your troubles will be much alleviated. The only thing that has no competition is hard work, both of body and brain. In the law business, like all other professions, my son, you can either work very hard or you can scrape along, putting off all things until to-morrow, and being rewarded with a slim diet and plenty of time for sleep. It is this opportunity for shirking that drives lots of chaps into the professions. If a

teamster or a day laborer were to loaf as much as do the young—and some old—professional men, he would be arrested for vagrancy. Lots of young lawyers are no better than vagrants, yet they cannot be arrested for having no visible means of support, for the reason that they can point with great dignity to their diploma and explain that they are waiting. So, while the teamster who loafs is universally condemned, the young professional man who "emulates the lilies in their indifference to labor of all kinds" is considered something of a hero. He has trained the world to think of him as a doggedly persistent youth, who prefers to eat a crust of bread and cling to his chosen profession, rather than to have a porterhouse steak for breakfast at the price of ringing a time clock every morning at eight o'clock.

Not all the men who graduate with you will practice law. In fact, I venture to prophesy that ten years from now not more than three per cent. of your class will be found in active practice. Tom Wilkins told me some interesting things about his class. It appears that lawyers are to be found in almost every kind of activity. One of his classmates was a street car conductor, another was working for three dollars a day as a carpenter, three were bank clerks, two had become book agents, another was collecting telephone rentals for a public service corporation, and another was keeping in touch, rather remotely, with his profession by becoming a policeman. Less than three per cent. were actively practicing law. Some few had gone into law offices as clerks and were working for twenty-five dollars a month—and experience.

Older lawyers refuse to become alarmed at an invasion of their terri-

tory by new blood. At least, they assume faces of stoical indifference and pretend to welcome the newcomer on the ground that "more lawyers, more law business"—that the new lawyer, in other words, makes business. Well, it is a fact that there usually must be two lawyers to a lawsuit; but unless a young man is going out to maintain a campaign of champerty and barratry, I do not know that the arrival of a new lawyer will help things very much.

Eureka was one of those sleepy little mid-Western towns that dot the lines of the railroads traversing Wisconsin, Iowa, and Illinois. There was one old lawyer there by the name of Baisden, a good old man who had all the law business of Eureka and its vicinity in fee simple. Well, one sunny day a young fellow dropped in with a copy of the Wisconsin Code under his arm and a tattered carpet bag, which contained all his worldly belongings. He had come to practice law in Eureka. I guess it took about all his available capital to engage an office over the local bank building. Anyway, he got himself installed and I suppose he gave old Blogg, the signwriter, the cry of distress of the Queer Fellows Order; for old Blogg put the boy up a sign, right over the drug store. Thereafter Blackstone junior settled himself to wait—and wait he certainly did. After a month or two he would walk around without very much ambition in his step, and his suit was as shiny, especially around the seat of his trousers, as the back of one of those scaly old reptilia of South America. Old ladies were heard to complain that the glare from the boy's suit on a sunny day affected their eyes. I don't know how true that may have been, but for some reason or other he used to perambulate in the

dusk of the evening, instead of in the heat of the day, as before. Jim Hastings, the groceryman, told me the boy would come in there after dark and smuggle a few groceries—usually of the most substantial sort (none of your *pâté de foie gras*)—up to his office.

Waiting at last must have become an intolerable weariness. Hope deferred—you know. I guess he settled himself down to some pretty hard thinking while munching Jim Hastings' bread and sausage.

Now he was not altogether wasting his time. He was getting acquainted, making friends, and had become particularly chummy with Uncle Ned, the town marshal. Uncle Ned was a pretty good solo player, and put in lots of time practicing at the tables in the back of Abe Stringer's saloon. There was one fellow he could not beat in town, and that was Epson, the young lawyer I am telling you about. One afternoon, Epson sat down and let Uncle Ned beat him three straight games, a feat which tickled the old man mightily. Then he bought Uncle Ned a couple of drinks and one of Stringer's abominable cigars. In Uncle Ned's opinion there was nobody in town like young Epson. When he got through with the old marshal, Epson went down to the railroad tracks and calmly smoked his pipe, waiting for a freight train to come through. Eureka was a division point on the railroad, and Epson did not have to wait very long for a freight. The first train brought in two bums, and the next three, and finally, when it was getting dark, Epson could have been seen traveling down the track to the outskirts of the town with a small army of hoboes on his trail. It appears that there was a little shack a way down

which was used by the gentlemen of the road as a sort of rendezvous, and here Epson gather his ragged army, and dispatched two or three of them with large buckets and the necessary currency to fill them with beer. About nine o'clock that night there was a first-class orgy under way, that would have tickled the heart of old Emperor Nero, could he have dropped in on them. Well, that illustrious gentleman did not drop in; but Uncle Ned and a couple of special deputies did. The whole gang were ar-

rested, excepting Epson, who skinned out in the dark. The bums were jailed, and Epson got busy and arranged to defend them. He did defend them, and got them off all right and made a speech that was talked about around Eureka for ten years. But it wasn't till old Uncle Ned died that Epson confessed that the whole thing was arranged between the marshal and himself. Well, he got his share of the law business around Eureka after that, and the shiny suit was soon after put into the discard.

"Little Journeys to the Legal Profession"*

(The Journey into the Gastronomic Field)

By STANLEY B. BOWDLE
Of the Cincinnati Bar

PROPRIETY is a great matter. It is the difference, often, between success and failure. Knowledge is a great matter, but unless knowledge espouses itself to the proprieties, trims its nails, and keeps its clothes brushed, it limps hamstrung through life.

When Adolphe Thiers, the young man with buff breeches—that Thiers who afterward slept in the bed of Louis XVI as President of France—went up to Paris to matriculate at the law school of the great university, he was rejected. This was because, unknown to poor Adolphe, there was a rule of that famous school that no young man could matriculate in the law department unless he could first prove that he had sufficient income to maintain himself with dignity, whether practice came or not. Now, Adolphe had nothing but the buff breech-

es that mother made, and hence was disqualified from studying that exalted science that has brought this world to its present stage of honesty, happiness and general prosperity. (Adolphe afterward secured the price.)

But the point to all this is that the regents of that university understood the proprieties, and were determined to prevent conditions coming about that might compel lawyers to violate them. The French code of legal proprieties did not contemplate a lawyer eating one-franc lunches at Paris hash-houses, or riding leg to leg in public trams, or occupying gallery seats at grand opera.

It contemplated him as a gentleman, with all the visible aristocracy that clothes and dignified riding and decorous dining can give, and hence it was that young Adolph's purse, rather than

*With apologies to Elbert Hubbard.

his head, was first examined. With their wealth of sentiment, still how practical are the French!

Of course, we Americans must sneer at this—we simply must. Though we know that we measure everything by money and clothes and dining, we simply must sneer at this. Every canon of our traditions compels it. So, having all sneered, let's pass on.

All the same, propriety is a great matter—greater than any of us suspect. He is the universal Cæsar whose tribute money we and our fathers have paid so long that we have forgotten to examine the kingly image and superscription on his lordly coin, and we contribute to the fatness of his pousy coffers more promptly to-day than ever.

So great is my own respect for the proprieties that I have always felt that a chair should be devoted to that subject by our law schools. While it will be some years before we shall demand an inspection of the young student's purse, we should be able now to show him that, as a lawyer, a whisk broom will be more useful than a knowledge of what constitutes agency, and that, however important it may be for him to understand the law of combinations in trade, it is of more importance to know that the toothbrush should not be carried in the vest pocket and that knee-sprung trousers are sufficient to render unmarketable a knowledge of the law of trusts for spendthrifts.

But this trite truth few lawyers comprehend, with the result that much legal genius sits mummified in its box-stall office in the shiny cerements of death, and power, ready to effervesce, ambles uncorked about our courts.

Clothes are important to the lawyer—oh, yes! The learned occupant of that

chair might devote several lectures to clothes. They are often the only thing that "severs a name from nothing." But, then even poor clothes do not work irreparable damage, for Charles Lamb has shown that they may be passed off to the idiosyncrasies of genius. But not so with poor victuals. Dining, decorous dining, is the dean in the assemblage of legal proprieties. You may worry along with shiny coat and hat of a past epoch, but these will be forgotten in the presence of impressive dining.

This is just what those French schools so well understand. And it is a great and worthy matter. In its presence, legal knowledge becomes insignificant and thousands of pompous law books stand mute. And, horrors! reader, this crux, this nexus, this sine qua non of all legal advancement, this source of all life, animal and legal—victuals and dining—has no place whatever in our legal curriculum. Think of it, too, this is overlooked by a profession whose business is to overlook nothing and cavil at undotted i's and uncrossed t's. And here we find ourselves in this dazzling new century without a single syllable on this transcendent subject! O ye proprieties, ye venerable gods! forgive while I atone for my profession with a line.

Dining, then, young man, is the most critical thing in legal life. It is the most necessary thing to life; why, pray, should it not be made the most impressive thing in life? Yes, Lord Byron was right: "Since Eve ate apples, much depends on dining. All depends on dining. But, mark you, it must be decorous dining—not that twenty-five cent stool-dining, which advertises at once your hunger and your poverty. It must be dining that advertises your ability to pay and that tells your co-diners of your success, real or simulated."

Watch the men of the bar of repute. At the busiest hours they enter the Waldorf-Astorias of the various cities, advancing to their tables with almighty unction. They regard the waiters with the studied, nonchalant, automobile hauter of established position, and, as their overcoats are taken, they sweep their eagle eyes over the assembled greatness of the city with the careless military air of Napoleon viewing the heights of Austerlitz. They meet handsome, many-languaged waiters with intrepidity, and examine the menu, in foreign tongues, without perturbation. (Oh, how I have coveted this power!) Obviously these men harvest ice in midsummer. Their affairs move resistlessly on the rubber tires of success, and no marvel, for early in legal life they were confirmed at the altars of this great propriety—dining.

Long fidelity to this admirable propriety has brought dyspepsia upon some of these legal worthies. But it was not the food. It was the four days' absenteeism in the week in early legal life, that they might dine with dignity the re-

maining two. It was fidelity to principle that caused it. Two such Nestors of the bar have honored me with their acquaintance, and I feel in their presence just as I feel when I meet some hero of Chickamauga or Stone River.

Let us, then, as Solomon puts it, hear the conclusion of the whole matter. You cannot join the golf club, or any other club—you have neither the pull nor the price; a box at grand opera is impossible; you must still ride vis-a-vis and limb-to-limb with poverty in the only democratic institution that survives; you cannot afford a pew in the Episcopal Church; you cannot even afford good clothes; but, my friend, you can dine twice a week with impressive dignity. By all means do it. Go where men will unconsciously celebrate about you; put yourself in the dazzling vibrations of success; dine decorously; eat reputably and conspicuously, and the libation thus poured out to that great gastronomic god—America's deity—will secure you his loving favor (in fees). Put money in thy purse, and eat right.

Title-Index to American Case Law

or

The Table of Cases for the Century and Decennial Digests, 1658-1906

By HAROLD G. LAINS, LL. B.,
Editor in Charge of Compilation

THE top label on the Century Digest carries the information that that publication covers all cases from 1658 to 1896. The question has been asked a number of times why the date 1658 was picked out for this label, the question carrying the gentle intimation

that the date was perhaps a legal fiction. This is not the case, however, and all who may be interested are invited, upon publication of the proper volume of the Table of Cases, to turn to the case of *Stone v. Boreman*, reported in 1 Harris & McHenry's Reports (Md.)

1, and digested in volume 41, Century Digest, under the topic "Public Lands," section 617, and verify the correctness of the label.

The alphabetical arrangement of this complete table develops some interesting and celebrated cases. The Dartmouth College Case will be easily found in its proper place under "Dartmouth College v. Woodward," with a citation to 1 New Hampshire, 111, and with the information that the state court was reversed by the United States Supreme Court, published in 4 Wheaton, 518, 4 Lawyers' Edition, 629. The digest references carry one to fourteen different points decided.

Many cases had to be specially treated because of the fact they are known under an "alias." Therefore you will be able to locate alphabetically the Dred Scott decision under "Dred" as well as under "Scott"; "Girard Will Case" under "Girard," with a cross-reference to "Vidal v. Girard's Ex'rs"; the "Jefferson Davis Case," under "Jefferson," with a cross-reference to "Davis' Case"; and many others.

In addition, there will be something over 950,000 other titles of more or less interest, all arranged in their proper alphabetical order, and each carrying a reference to every standard publication in which the case has been reported, and also references to the topics and sections of the American Digest System (Century and Decennial Digests) where the various points of law are digested.

It will be seen from the foregoing sentence that the phrase "Table of Cases" is inadequate. The phrase is also a hard and cold one, and makes no appeal to the lawyer's imagination. "Title-Index to American Case Law" would sound more interesting. "Finding List of American Case Law" is al-

so interesting, and is a very accurate description of this table.

Volume 1 of this table containing "A-B" has been published. "C" contains 730 pages—too much to be added to the first volume without splitting. Rather than do this, volume 1 will have a smaller number of pages than the subsequent volumes, which will probably be divided as follows: vol. 2, C-F; vol. 3, G-L; vol. 4, M-R; vol. 5, S-Z.

Volume 1 will place in the hands of thousands of lawyers a goodly portion of this title-index, or finding list, and an examination of its pages will not only impress one with the magnitude of the task of preparing and arranging the material for this Table, and of printing and binding it, but will also suggest a question as to the sources from which we gathered the information which the Table contains. Work of "preparing copy" was begun on the Decennial Table August 9, 1906, and the actual work of setting the matter on the linotype machines was begun September 9, 1911.

First, there are the titles of the cases, and this means the title of every reported case from a court of last resort from 1658 to 1906, a period of 249 years. Following the title is the information as to the various publications in which each case has been reported. If the case has been appealed to the United States Supreme Court, this information is given in parenthesis, showing the disposition. Many cases show additional affirmances, reversals, etc., by higher courts in the same state, and miscellaneous proceedings on rehearing, etc., all of which is very valuable. Then, in addition to this information, the Table shows where each point in every case is digested in the only complete digest of American case law; that is, the American Digest System.

The mechanical methods pursued in collecting and tabulating this information may prove of interest. In the first place, in order to secure the titles of the cases it was necessary to have a type-written copy made of the table of Cases Reported in every volume of American law reports. This was not all done at one time, however, or in this literal way. It will be apparent to those who are familiar with the National Reporter System that the tables of official citations printed on blue paper in the various volumes of the Reporters furnish this information for the period of time covered by the Reporter System. The tables for the reports published before the Reporter System have been in the making for several years. All these tables were cut up, and each title pasted on a slip and made a part of the "plant" of titles.

For the past fifteen years the work of compiling and verifying this list has been going on, and references have been added to the various selected-case series and other standard reports, for cases which have been reported in these publications. This plant of titles with parallel references has been verified three times by referring to the original reports. It has been used by the West Publishing Company for some years in verifying the correctness of cases cited by judges in their opinions—for every case cited is verified before publication in the Reporters. Every case cited in a current opinion was checked to this list of titles. If the judge's citation agreed exactly with the citation found in the plant, it was assumed to be correct. If there was the slightest variation, reference was made to the volume and page of the report in which the case was to be found, and the judge's citation, or the plant of titles, corrected, as

the case might call for. Using this plant of titles for verification purposes in this way has given this Table the test of years of actual use, and makes it as nearly perfect as a reference list can be made.

It was next necessary to add to each of the 950,000 separate titles in this title plant the references to the topic and section of the Century Digest and the Decennial Digest where each point had been digested. The first step was to cut up the fifty volumes of the Century and the twenty volumes of the Decennial and paste each paragraph on a separate slip. It was then necessary to go through this plant of pasted paragraphs, checking it back to the original digests, in order to see that no slips were lost, and to mark, on each slip the volume and name of the digest and the topic and section under which each slip belonged. There were then two plants, one of titles arranged by volume and page of the reports, and one of paragraphs arranged by topic and section of the Century and Decennial Digests. The first plant consisted of nearly a million slips, and the second plant of over two million. From the nature of the case, it was necessary, before the two plants could be thrown together, to rearrange the two million slip plant on the same basis as the one million slip plant, namely, by volume and page of the reports. Here, too, it must be borne in mind that this rearrangement was not all undertaken at one time. The Century Digest was cut and pasted and rearranged long before the later volumes of the Decennial Digest were published, and the Decennial was cut, pasted, and arranged, volume by volume, as it was published.

Now, after both plants were in the same general arrangement, the next step was to throw the plants together, pin-

ning the Digest paragraphs for each case behind the proper title slip in the plant of titles. In order to be sure that the plant of titles was complete, and that the Digest references were properly attached to the right cases, it was necessary to check all of this matter, page by page, with all of the Reports and Reporters. When a case was reported in two or more publications, any variations in the title had to be noted, and cross-references made from these variations to the title as it appeared in the State Reports. For example, if the case was reported as *Snyder v. State* in the State Reports, and *Schneider v. State* somewhere else, a cross-reference title would be compiled as follows: *Schneider v. State*, see *Snyder v. State*. Incidentally, it was necessary to prepare thousands of these cross-reference titles.

Since beginning the work in 1906 a force of persons varying from 20 to 60 has been engaged in gathering the material and preparing it for printing. The slips for the Table are uniform, 4x7½ inches in size, and so far the Table has required 2,760,750 slips. These slips are filed away in boxes, and already the material prepared requires 1,227 boxes, each box containing 2,250 slips. The slips are consecutively numbered for convenience in handling and refiling, and a boy can stamp, with the numbering machine, an average of 12,000 slips a day. Merely to number the required slips would take, therefore, about ten months. The machine weighs sixteen ounces, and in numbering 12,000 slips a day the boy is lifting six tons. Nevertheless he has not yet gone on the Orpheum circuit.

The slips used, if placed end to end, would make a pink paper ribbon three hundred and twenty-seven miles long, or would reach up into space 1,726,560

feet. The *aéroplane* altitude record is only 13,943 feet, being held by Roland G. Garros of France.* If Garros had run this pink ribbon as a sounding line from his 'plane to the earth, he could have measured his distance with it a hundred times and still have had enough paper left to write an account of his experience. Or, if the ribbon were laid along the ground, it would reach nearly from New York City to Richmond, Virginia. If the slips were theater tickets, there would be enough to send all the inhabitants of Manhattan and the Bronx to the "show," except about 65,000 chafeurs, street car conductors, and motor-men, who would have to remain on duty. If the slips were ballots, they would equip all the inhabitants—men, women and children—of our five territories with two ballots apiece, and leave some over for souvenirs.

One hundred reams of paper have already been used in preparing these slips, and they weigh 9,250 pounds, or more than four and a half tons.

When the Table is transferred from paper slips to metal plates for printing, it will weigh 25,000 pounds.

The above, however, is the mere physical weight. How heavily those slips weigh upon the clerical force handling them goes into another region of dynamics, for the bulk of this table is by no means its most important or impressive feature. The time that is put into the checking and rechecking necessary to secure accuracy is much more than its straight preparation. In order that a table of cases may be taken for granted, nothing can be taken for granted in preparing it.

With many clerks handling the millions of slips, it was necessary to take

*Subject to change without notice.—Ed.

extraordinary precautions to prevent the loss or destruction of any part of the plant. The first precaution was to have the work done in a large room wholly apart from all other work. Special cabinets were made for filing away the plant, and waste paper baskets were carefully examined each night before the visit of the janitor, in order to ascertain that no slips had been accidentally thrown away.

One page of the Table, when completed, will contain about 6,400 ems. There will be approximately 9,000 pages, making 57,600,000 ems. A typesetting machine, working day and night with expert operators, can set about 36,000 ems. It would therefore take one machine, working double time, five years and four months of working time to merely put the Table into type, after it is completely "prepared."

Although the Table will only occupy five volumes, whereas the text of the Decennial fills twenty volumes, nevertheless the work is of such a nature and the typographical arrangement such that it will take as long to "set" the Table as it did to put the entire text of the Digest into type.

As the Company has twenty-eight ma-

chines, instead of the one used for the illustration, they are going to beat the above estimate somewhat, in spite of the fact that the National Reporter System, the Key-Number Series of the American Digest, and various other publications have to be kept going.

Consideration of some of these features will indicate why no publishers heretofore have ever cared to take upon themselves the task of preparing a Complete Table of American Cases, in spite of the fact that every practicing lawyer realizes its value to the profession. It will also be seen that there were reasons why the Table was not published as soon as the text of the Decennial was finished.

There was once a publisher who got out a book with great care and triumphantly proclaimed in his publisher's preface that at last a book had been published which was letter perfect. The story goes that an error was found on the title page. The West Publishing Company does not hope to produce a reference list six times the size of an unabridged dictionary of the English language, and make it perfect, but it has taken extraordinary precaution to secure accuracy and completeness.

On Wills*

By *LEE M. FRIEDMAN*
Of the Boston Bar

Fair held our breeze behind us—'twas warm with lovers' prayers;
We'd stolen wills for ballast and a crew of missing heirs;
They shipped as able Bastards till the wicked nurse confessed,
And they worked the old three-decker to the Islands of the Blest.

—*Rudyard Kipling.*

IN "JULIUS CÆSAR," when Shakspeare showed the mob calling on Marc Anthony to read Cæsar's will before they decided on what they would do to his murderers, he illustrated both the natural curiosity over how the deceased planned to distribute his estate as well as how tremendously the provisions of a will may change the point of view. It was the fact that they, as the Roman Public, were named as Cæsar's heir that stimulated the mob to revenge. So from time immemorial the provisions of wills have made and unmade men, and played an all-important part not merely in the estimate and memories of the dead but in the lives of the living. All literature is so full of stories and romances of the surprises and disappointments of heirs, and of wills, good and bad, curious and unexpected, that Kipling, in this quotation from his delightful little poem on the good old three-volume novel of bygone days, represents wills as part of the regular stock in trade of the novelist.

Most lawyers will agree with Lord Coke that "wills and the construction of them do more perplex a man than

any other learning; and to make a certain construction of them exceedeth jurisprudentum artem." It is impossible to explain to a layman those principles of law that are involved in such cases as that of the will of the pious Jew who bequeathed his estate for the instruction of the Jewish youths of London in the learning of their religion, which the courts decided was as good as a public charitable bequest, but could not be so applied, and carried out what they were pleased to call the testator's intention by using his money to maintain a Christian Foundling Asylum.

It is with a feeling of some fear that a man to-day writes a will without the advice of a lawyer, so the quaint and picturesque wills of the past are becoming more uncommon. The spread of the news of litigation over wills by the newspapers has done much to teach the public to heed the advice that "a man may work out his religion from within and for himself, but where it comes to writing a will, the advice of a good, level-headed lawyer cannot be overestimated."

Actual wills, as they illustrate the customs and habits of a generation or country, or as they mirror the characteristics of some famous person, are even more interesting and absorbing than the wills of fiction.

While it is curious to observe that the

* Reprinted from *The Green Bag*.
Ancient, Curious and Famous Wills. By Virgil M. Harris, member of the St. Louis bar, lecturer on Wills in the St. Louis University Institute of Law, trust officer of the Mercantile Trust Company of St. Louis, and author of "The Trust Company of To-Day," etc. Little, Brown & Co., Boston, Mass.

"Father of his Country" misspelled words in writing his will, it is a historic fact of some importance to learn that Washington made elaborate provisions to liberate all his slaves on his wife's death. He explains that: "To emancipate them during her life, would, though earnestly wished by me, be attended with such insuperable difficulties on account of their intermixture by marriage with the dower negroes, as to excite the most painful sensations if not disagreeable consequences from the latter, while both descriptions are in occupancy of the same proprietor; it not being in my power, under the tenure by which the dower negroes are held, to manumit them."

In like manner, John Randolph—"Randolph of Roanoke"—gave all his slaves their freedom, "heartily regretting that I have ever been the holder of one," and provided a sum not exceeding \$8,000 "to transport and settle said slaves to and in some other state or territory of the United States giving to all above the age of forty not less than ten acres of land to each." Having made several codicils to his will, Randolph added a final one:

As lawyers and courts of law are extremely addicted to making wills for dead men, which they never made when living, it is my will and desire that no person who shall set aside, or attempt to set aside, the will above referred to, shall ever inherit, possess, or enjoy any part of my estate, real or personal.

Thomas Jefferson and Robert E. Lee also provided for the manumission of their slaves. Chief Justice Marshall, after directing the freeing of his body servant, provided that "if such emancipation should not be consistent with law, Robin might select his future owner from the testator's sons and daughters."

Benjamin Franklin begins his will with an elaborate introduction of him-

self as "printer, late Minister Plenipotentiary from the United States of America to the Court of France, now President of Pennsylvania," and bequeathed his "fine crabtree walking stick, with gold head curiously wrought in the form of the cap of Liberty," to his "friend and the friend of mankind, George Washington." He left £100 to the free schools of Boston, from which fund the well-known Franklin medals are given to scholars of the High and Latin schools, and £1,000 each to Boston and Philadelphia to help young married artificers under the age of twenty-five. It was this fund which has figured in repeated litigation in the courts of Pennsylvania and Massachusetts.

Alexander Hamilton drew his will fearful that his estate would prove insufficient to discharge his debts, and entreated his children to make good any deficiency.

Though conscious that I have too far sacrificed the interests of my family to public avocations, and on this account have the less claim to burthen my children, yet I trust in their magnanimity to appreciate as they ought, this my request.

Paul Revere cut off his grandson Frank, "who now writes his name Francis," with one dollar.

John Sherman, whose name has been lately so often in the mouths of the public as the author of the Anti-Trust Law, directed that within two years of his death, his books and papers were to be placed in the hands of some competent person who should "preface and publish an impartial biography of me with selections of my speeches and writings." Ten thousand dollars was set aside for that purpose, and the testator explains that this is done "not to secure a eulogy, for I am conscious of many faults, but I claim that in my duty to the public I have been honest, faithful and true."

Martin Van Buren begins a will full of domestic affairs, yet carefully conceived and well drawn, by explaining that he has been "heretofore Governor of the State and more recently President of the United States, but for the last and happiest years of my life, a farmer in my native Town."

Daniel Webster expressed:

My great and leading wish is, to preserve Marshfield, if I can, in the blood and name of my own family. To this end, it must go in the first place to my son, Fletcher Webster, who is hereafter to be the immediate prop of my house, and the general representative of my name and character.

Perhaps the simplest will of all is a short will of seven or eight lines by which Senator Roscoe Conkling left his whole estate to his wife. The will of the late Edward H. Harriman is hardly any longer, and his millions were given to his wife. So, too, Russell Sage's will is a model of simplicity and brevity.

Napoleon's will contains some striking passages:

I die prematurely assassinated by the English oligarchy. * * * The English nation will not be slow in avenging me.

The two unfortunate results of the invasions of France when she still has so many resources, are to be attributed to the treason of Marmont, Augerau, Talleyrand and La Fayette.

I forgive them—may the posterity of France forgive them like me.

I disavow the "Manuscript of Helena" and other works under the title of Maxims, Sayings, etc., which persons have been pleased to publish for the last six years. These are not the rules which have guided my life. I caused the Duc d'Enghien to be arrested and tried because that step was essential to the safety, interest and honor of the French people, when the Count d'Artois was maintaining, by his confession, sixty assassins at Paris. Under similar circumstances I would act in the same way.

Lord Nelson dates his will "October 21, 1805, in full sight of the combined fleets of France and Spain, distance about ten miles," and asks the royal favor for Emma, Lady Hamilton.

Dean Swift in a long and elaborate will among other legacies left his third best beaver hat and his horses to his friend, the Reverend John Jackson, Vicar of Santry, "lamenting that I had not credit enough with any Chief Governor (since the change of times) to get some additional Church Preferment for so virtuous and worthy a gentleman."

Voltaire left a note endorsed "Mon Testament," which on being opened exhibited these lines in his own hand:

Je meurs en adorant Dieu,
En aimant mes amis,
En ne haïssant point mes ennemis,
En détestant la superstition.

Lord Bacon, in 1625, bequeathed his soul and body to God, while his name and memory he left to men's charitable speeches and to foreign nations and next ages.

Philip the Fifth, Earl of Pembroke and Montgomery, with grim sarcasm begins his will:

Imprimis: As for the soul, I do confess I have often heard men speak of the soul, but what may be these same souls, or what their destination, God knoweth; for myself, I know not. Men have likewise talked to me of another world, which I have never visited, nor do I even know an inch of the ground that leadeth thereto. When the King was reigning, I did make my son wear a surplice, being desirous that he should become a Bishop, and for myself I did follow the religion of my master; then came the Scotch who made me a Presbyterian, but since the time of Cromwell, I have become an Independent. These are, methinks, the three principal religions of the kingdom,—if any one of the three can save a soul, to that I claim to belong: if, therefore, my executors can find my soul, I desire they will return it to him who gave it to me.

Item: I give my body, for it is plain I cannot keep it; as you see, the chirurgeons are tearing it in pieces. Bury me, therefore; I have lands and churches enough for that. Above all, put not my body beneath the church porch, for I am, after all, a man of birth, and I would not that I should be interred there where Colonel Pride was born.

Item: I will have no monument, for then I must needs have an epitaph and verses over my carcase; during my life I have had enough of these.

He goes on to say his last compliments to some of his friends:

Item: I give nothing to my Lord Saye, and I do make him this legacy willingly, because I know that he will faithfully distribute it unto the poor.

Item: I bequeath to Thomas May, whose nose I did break at a masquerade, five shillings. My intention had been to give him more; but all who shall have seen his "History of the Parliament" will consider that even this sum is too large.

Item: I give to the Lieutenant-General Cromwell one of my words, the which he must want, seeing that he hath never kept any of his own.

The Earl of Warwick, by his will dated 1296, gave his wife a cross "wherein is contained part of the wood of the very cross whereon our Saviour died." Lady Alice West, five years before the death of Chaucer and nearly eighty years before the first book was printed in England, in a will dated 1395, gave to "Johane my daughter, my sone is wyf, a masse book, and alle the bokes that I have of latyn, englisch, and frensch."

Mr. Daniel Martinett of Calcutta made bequests in his will:

Fifthly. To Mr. George Grey, Secretary to the Presidency, I bequeath all my sincerity.

Sixthly. To Mr. Simon Drose, Writer to the Secretary's office, all my modesty.

Seventhly. To Mr. Henry Higgenson, also of the Secretary's office, all the thoughts I hope I shall die possessed of.

Eighthly. To Mr. Thomas Forbes, all the worldly assurance which I had when I had taken a cheerful glass, though in fact a doleful cup.

The Earl of Stafford, one of the ardent followers of James II, by his will gave a permanent testimonial of his unhappy marriage:

To the worst of women, Claude Charlott de Grammont, unfortunately my wife, guilty as she is of all crimes, I leave five-and-forty brass half pence, which will buy a pullet for her supper. A better gift than her father can make her; for I have known when, having not the money neither had he the credit for such a purchase; he being the worst of men, and his wife the worst of women, in all debaucheries. Had I known their char-

acters I had never married their daughter, and made myself unhappy.

In 1770, there was admitted to probate at the Deanery Court at York, England, the poetical will of one William Hickington:

This is my last will,
I insist on it still,
To sneer on and welcome,
And e'en laugh your fill,
I, William Hickington,
Poet of Pocklington,
Do give and bequeath,
As free as I breath,
To thee, Mary Jarum,
The Queen of My Harum,
My cash and my cattle,
With every chattel,
Come heat or come cold,
Sans hindrance or strife,
Though thou are not my wife.
As witness my hand,
Just here as I stand,
The twelfth of July,
In the year Seventy.

It is less than a year ago that all Boston was startled by a posthumous joke of a Miss Cora Johnson, who left a will disposing of some \$100,000 while her actual estate was less than \$100. While perhaps a more subtle bit of humor was the provision in the will of a Scotch dissenting minister, who bequeathed a sum of money to his chapel at St. Ives to provide "six Bibles every year, for which six men and six women are to throw dice on Whit Tuesday after the morning service, the minister kneeling the while at the South end of the communion table, and praying God to direct the luck to His glory."

A curious custom has come down from bygone ages carrying out an old bequest, on Good Friday, in the churchyard of St. Bartholomew the Great, Smithfield. "After divine service, one of the clergymen drops twenty-one six-pences on a tombstone, to be picked up by as many poor people, widows having the preference. The will providing for this is lost, and the distribution is now

made out of the parish funds. The bequest is said to date several hundreds of years back."

A pretty bit of sentiment is exhibited by the will of the late Hon. James Gregory:

Having had my sympathies often aroused by reason of the extra burden and care entailed on loving mothers, poor in the things of earth, who have brought twins into the world, as an expression of that sympathy, I leave in trust to my beloved town \$1,000, with the provision that the interest be divided on January first between all twins born in Marblehead during the previous year. In case no twins are born during a given year, the interest shall be added to the principal.

So the solemn moment of will-making has revealed the characters and hearts of the testators in their least disguised form. The silly and frivolous have made curious wills, the generous and great have made striking and noble and loving gifts. To turn over the pages of

a collection of wills, culled from all ages and all lands, is to get a bird's-eye view of all humanity. Farce and tragedy are curiously intermingled. Perhaps the layman is all the more puzzled and perplexed if he allows his imagination to survey the wide range of possibilities for testamentary disposition. While the emotions that are suggested by this ever recurring exhibition of the wisdom and folly of mankind leads the lawyer to join in the gladsome toast:

Ye lawyers who live upon litigants' fees,
And who need a good many to live at your ease,
Grave or gay, wise or witty, whate'er your degree,
Plain stuff or State's Counsel, take counsel of me:—
When a festive occasion your spirit unbends,
You should never forget the profession's best friends:
So we'll send round the wine, and a light bumper fill,
To the jolly testator who makes his own will.

What is the Common Law?

By ARTHUR L. CORBIN
Professor of Law, Yale University

ONE of the many strange things in this world is that it is possible to study a subject for several years, or even for a lifetime, and in the end have very little understanding of what the subject itself is. This may not seem so strange in the case of a subject with the creation of which man had nothing to do, such as electricity, or space, or the universe, or life. But the common law is the creation of man, and we should be able to understand and define it. No doubt nearly every student comes to the

law school supposing that he already knows what "law" in the abstract is, and that his task is only to find out what the "laws" in the concrete are. The law school should make an earnest effort to correct this mistake. No student should be permitted to graduate merely because he has memorized a large number of rules that his instructors suppose to be "laws." Law is not merely an art or a trade; it is the science of doing justice. Law, therefore, should be taught as a science. The chief object of law study

is the gaining of that reasoning power that enables one to determine in actual cases what human justice is.

The origin of the name "common law" was somewhat as follows: In medieval times different men were not governed by the same law. This was true both on the Continent and in England. But restricting the discussion to England alone, there were different laws applicable to different localities. There were different and independent courts, creating different systems of law. And there were different systems of law applicable to different classes of men. The law merchant was such a separate system, adopted by the courts of the international merchants—the courts of Piepoudre held at the great fairs, the courts of Admiralty, and the courts beyond the seas. This law merchant did not apply to the ordinary citizens of England, and the King's courts knew it not and enforced it not. Then there were many local courts—city courts and courts of the barons—each administering a law peculiar to itself. Such law was not "common" throughout England.

In the course of time there came to be one set of laws that were common to all England and one set of courts with jurisdiction over all England. Those courts were the King's courts, and the common law was the law administered by the King's courts. As feudalism decayed and as nationalism under the leadership of the King prevailed, the power of the King's courts became greater and greater, until finally the other special and local systems of law were mainly superseded or swallowed by the law of the King's courts, the law that was common throughout England. And so to-day we incline to forget the many and the local systems of law—although their remnants still exist—and we think

of the English and the American law as being only one system, the system created by the King's courts and known as the "common law."

In the foregoing sense of the term, these United States have very little "common" law. The separate States have almost independent jurisdiction, and each is busy creating its own law. There is more or less uniformity, but there seems to be coming a greater and greater diversity. If, however, we define "common law" not as a geographical term, but as a general method of determining and doing justice, then we still have a common law.

The common law should not be regarded as a body of common rules. There are none that are unchangeable and controlling upon the courts. There has always been a pleasant fiction that such unchangeable rules exist, that they may be memorized and more or less mechanically applied, but the fact is otherwise. If there are such rules, whence did they come and when did they originate? It is true there have always been rules of some sort, but they are temporary and advisory in character. The rules of yesterday are not the rules of to-day. The rules of England are not the rules of Connecticut or of California. A rule of law is born because it seems to fit the occasion, and when it no longer fits the occasion it dies. *Cessante ratione, cessat ipsa lex*. The supposed rules of the common law are merely the reasons given by the courts for their decisions. The actual decision binds the litigating parties only. The reasons bind nobody at all. Lord Mansfield is said to have advised a young judge as follows: Decide your cases promptly, but never give any reasons for your decision; your decision will probably be right, but your reasons are sure to be wrong. This ad-

vice was not meant to be taken literally, but it indicates that a judge's reasons are not laws. There is only one common rule of law, common to all the centuries and to all the States. That rule is that human justice shall be done by the courts, in individual cases as they arise, in the light of the wisdom of the time.

The common law is not a body of rules; it is a method. It is the creation of law by the inductive process. England and her colonies and all of our States have this method in common, though in using it they may all arrive at different results. From an increasingly large number of states of fact and individual decisions, we are constantly striving to arrive at a general doctrine, a universal rule. But we never arrive. It is folly to announce that we have already arrived at a body of universal rules. A universal rule is within the power of infinity and omniscience alone. The whole of life is inductive experience, and the possibilities are without limit and without end. It is the privilege and duty of the courts to correct the conclusions of the past by the light of the facts and experience of the future. This is just what the courts always have done, though oftentimes pretending the contrary.

The common law, therefore, is the science of human justice. The lawyer and the judge must find what justice is, must learn the wisdom of his time. This is no mere feat of memory, no mere holiday task. Woe to that judge who, finding himself freed from the fiction of a system of cut and dried rules, proceeds to decide cases guided only by his own inner consciousness; who sees as the light of wisdom only the feeble light

within himself; who seeks justice only within his own heart. The fact that human justice and human wisdom vary with the time makes it all the harder to determine what justice is. It is a great glory of the common law that it possesses so rich and complete a record of the experience of the past in the multitude of recorded precedents. Many of these precedents are erroneous, no one of them is the law, none of them is binding except as to the litigating parties and the exact issue between them. But without knowing those precedents no one can approximate justice. What a rich field of human experience those precedents are! It is to the lawyer and the judge what the whole field of history is to the economist and the statesman. Great industry is necessary in cultivating this field, and great powers of analysis and comparison. But how great is the reward! It gives the confidence and accuracy and sureness of touch that one delights to see in the trained pianist or the practiced surgeon. Without it, the pianist murders harmony, the surgeon murders his patient, and the lawyer murders justice.

Justice was once determined by single combat or by the test of boiling oil. It is so determined no longer. How it will be determined in the future is largely for the judges of the future. They will add to the wisdom of the past and create a new human justice. In so doing they must know and be guided by the long experience of the past, as they mould the law to suit not the dry bones of the past, but the living flesh and blood of their time.

The Editorial Staff of the West Publishing Company

ON THE title pages of the various publications of the West Publishing Co. there appears the legend "Edited by the Editorial Staff of the National Reporter System" or "Compiled by the Editorial Staff of the American Digest System."

What is the personality, the system, the theory of work, which stands behind the noncommittal words "Editorial Staff"? To those who know, these words mean a great deal. In the belief that the legal profession will be interested in learning something about this greatest of legal-editorial bodies, this brief account of its organization and development is given.

And first, a brief historical review of the work of law reporting. The publication of the decisions of our courts has been effected, in times past, in three somewhat different ways. In the early days, in the absence of any public provision for the purpose, individual lawyers undertook, from time to time, to supply the needed reports. These voluntary reports were casual, sometimes incomplete, generally unremunerative, and there were gaps, both of time and of jurisdiction, where there were no reports at all.

The next plan was to put reporting upon a basis of public support by providing for the appointment of a regular reporter and defraying the expenses from the public treasury, either partially or in full. This plan secured a permanency, which had previously been lacking, but it did not cure one of the

most serious faults of the voluntary system of reporting, namely the diversity of editorial method which would inevitably characterize reports edited by many men of many minds working independently of each other.

The personal factor continued to be a large one. Ever change in the office of the reporter resulted in a change of methods, and even obvious improvements were of questionable advantage to the public, when they resulted in increasing the uncertainty of the lawyer as to where he should look for a given line of cases. The different methods shown in the early reports of the Supreme Court of the United States furnish a conspicuous example of these variations.

In England similar conditions, of even longer continuance, resulted in the adoption in 1865 of a new plan, namely, a uniform system of reporting for all the courts. This immediately displaced the several series of reports then being published, and has since continued successfully and satisfactorily.

In this country the problem was not so simple. Instead of a single jurisdiction, every state is, in effect, an independent jurisdiction, while, at the same time, the decisions of each state are recognized by every other state, and the reports and digests of all the states are consulted throughout the Union. This situation plainly called for some plan of reporting, indexing and digesting which should make the entire mass of decisions equally and readily accessible to all.

The committee on Law Reporting of

the American Bar Association in 1898 clearly pointed out the necessity of uniformity in reporting, indexing and digesting the decisions of the entire country, adding that "effort should be directed toward the adoption not only of the best methods of making reports and digests, but also of uniform methods in all of the states."

"In view of the fact that the whole country is interested in the decisions of each state it is important that the reports of each state should be * * * summarized and indexed under a common plan, so as to be readily accessible to all."

"Such a common plan has been adopted by the publishers who have undertaken to publish the reports of the whole country in a single system."

"In the uniform system of reporting thus adopted, we are furnished with the means of becoming acquainted with the decisions of all of the courts of all of the states alike, and we have a uniform system of reporting and digesting common to all, and a basis, at least, for a common system which shall be satisfactory to all."

The committee further reported that there was no practical means of securing the adoption of a uniform plan by governmental authority, or by the combined action of the official reporters, but that it would be better for the Bar to avail themselves of the labors of private publishers, who make it their business to ascertain the needs of the profession, than to have the work done through voluntary associations or official authority.

For ten years previous to this report of the Bar Association, the private publishers referred to in the report had been developing a plan for uniform reporting and digesting, the plan which has revolutionized legal reporting and

digesting in this country, and which the present-day lawyer accepts as a matter of course—the plan, in a word, which has evolved "The Editorial Staff of the National Reporter and American Digest Systems."

The system has brought about many desirable results, such as promptness of publication unknown before, economy in cost, regularity and symmetry in the mechanical features of the reports, etc.

But by far the most important advantage which has been gained is to be found in the uniformity of editorial work. This is of much importance, particularly in the writing of the syllabi and the construction of indexes and digests. This most essential feature can be secured only by eliminating the peculiarities and supplying the deficiencies of individual reporters and digesters, and combining and co-ordinating the scientific and practical knowledge and ability of all in their joint work.

The reporting must be done in accordance with uniform rules as to the subjects, contents, and form of the headnotes and their catchwords, the statements of fact, etc. The indexing and digesting must be uniform and accurate in classification, division, and arrangement. The rules and instructions for these ends can be derived only from knowledge and study of the best previous works, and from experience.

Manifestly the framing of such rules and instructions and schemes of headings and cross-references, which are the very foundation of the System, and, even more, the application and use and development of them, in the minute detail adapted to the immense quantity of material to be dealt with from day to day, require the services of a large body of men specially equipped for the purpose by qualifications and training.

Writing a proper headnote involves more than reproducing the language of the opinion; it calls for the knowledge of the state of the law on the subject, careful study to see, in that light, the point decided and the facts involved, and ability to express the result in an independent proposition, correctly, clearly, and concisely.

For the instruction of the new member of the staff, a book of 125 pages on Headnote Writing has been prepared, containing rules and instructions derived from long experience and the study of the best previous works, and incorporating the scientific and practical knowledge and ability of a large body of editors who have been engaged continuously for nearly a quarter of a century in this work. With these settled rules, no individual editor is allowed to take liberties.

The extent of the accumulated experience of this editorial body is truly impressive. The cases included in the National Reporter System are now about a half million, and far exceed the total of the cases contained in all American Reports previously published. It is of the utmost significance to the legal profession that this immense body of decisions (the most recent and important), as well as the largest portion of our Case Law, should have been reported and digested by uniform methods, not only under the same system, but, to a great extent, under the direction and supervision of the same minds.

For example, the syllabi and other features of the reporting of cases during the past twenty years have been prepared under the direction of the same editor, who is now at the head of that branch of the work, and have been actually revised by him personally and by an assistant under his direct supervision.

The editorial staff, at the present time, consists of about forty editors, constituting several groups of specialists. There are, first, the specialists who edit the opinions in the current Reporters, and prepare the headnotes, statement of facts, and index paragraphs.

There is then a second group of editors, who classify each headnote and index paragraph to the American Digest Classification. These are the Key-Number specialists.

Still another group consists of the experts on the compilation of indexes. Others have supervision of the preparation of the various tables.

A large and important branch of the editorial staff is composed of the experts who specialize in the compilation of digests. This group of editors is made up of members of the editorial staff who have previously had long experience in the editing of cases, in classification, and in the compilation of indexes.

Still other editors specialize in the compilation and revision of the Statutes of the various states and of the United States. Each of these groups of editors is under the direct supervision of a chief or reviser.

Important changes are rare on the editorial staff. Of the lawyers making up the staff at the present time, 24 have been members thereof for 12 years or more. Of these, two have served for 24 years; one for 23 years; two for 22 years; one for 21 years; one for 17 years; two for 16 years; one for 15 years; six for 14 years; three for 13 years; and five for 12 years.

The editorial staff of the West Publishing Company is thus a continuous body. Editors come and editors go, but the fundamental principles involved in the work of reporting decisions and of digesting these reports remain. The

personal element gives way to the established system; yet this perpetuation of a definite system has been no obstacle to improvements.

Those who have known the methods of the system longest, know best how constant has been the improvement. All that experience has taught (and no other editorial body has ever had so extended and varied an experience) has been worked up into the new features which have increased, year by year and month

by month, the value of the National Reporter System and the American Digest System and which have incidentally increased the cost to the publisher, but not to the "ultimate consumer," the lawyer.

The system is an organic whole, reaching back into the past and looking forward into the future. It has done the unique work which it has accomplished in the field of legal reporting and digesting because it is a unit, and because it is alive.

The Descriptive Word

By R. A. DALY

Special Lecturer on Brief-Making and Legal Bibliography in Many Different Law Schools

WHATEVER system may be used in "running down" the law, text-book, encyclopedia, digest, or report, the ultimate aim, if possible, is to find that case, or those cases, where, upon facts similar to the immediate question involved, some court has applied the law.

If an automobile is the subject-matter of litigation, let the eye catch the word "automobile" in a text-book illustration, or digest paragraph, or syllabus in a report, and the searcher intuitively stops to examine the facts of that particular case. The search for the law has become a search for facts to which the legal principles have been applied, rather than a search for the abstract principles themselves. The legal principle involved must be determined by the lawyer as a lawyer, even before the search begins. The ability to analyze the facts and apply the particular principles measures the lawyer's real aptitude for his profession.

Very few lawyers correctly state the principles when asked. They confuse with principles legal topics based upon facts and adopted by authors, when in reality these legal topics simply represent conditions and facts to which legal principles have been applied. This search for facts to which legal principles have been applied gave rise to "catchwords," emphasized by black-letter lines used in text-books, legal periodicals, and digests, for no other purpose and with no other point in view than to call the attention of the reader to some fact of special prominence in the specific statement contained. There was no definite line or rule that controlled the selection of these catchwords or lines, and therefore they were not collected upon any rules approaching a system or plan, and the lawyer was always uncertain where to look for his law.

Every proposition of law is based upon a statement of facts. Law in the ab-

note

stract may be defined as a rule of action applicable to given conditions or facts. Whenever these facts are stated in clear, concise language, it will be found certain things are bound to appear: First, there will be some word or phrase which describes the subject-matter of the controversy; second, the real point in dispute; third, the cause or ground of the action; and, fourth, if essential to the real question involved, the character of the parties—that is, whether corporation or individual, or of any special profession or calling.

This enables one to select as words of special prominence, or catchwords, words or phrases descriptive of the special points mentioned, and reduces this selection to somewhat of a system, and the words or phrases can well be termed "descriptive words." These words, collected in a descriptive word index, save much time and labor in searching for the law. The difficulty has been that so many propositions of law, so termed, or illustrations of their application, can properly be placed under any one of several topics or subjects, and one never feels sure that he is searching in the right topic, or that all appro-

priate topics have been examined. For example, an accident occurs upon a railroad, due to the alleged negligence of the company. One author may place this under the topic Negligence; if the relation of carrier and passenger existed, another might place it under Carriers; still another might place it under Railroads; and still another may place it under Personal Injuries; then, again, if the relation of master and servant existed, the same question might be treated under that topic.

Where will the search begin, and where will it end? In any and all of the topics mentioned there will be found a long and more or less complicated analysis, requiring close examination to discover just where the specific question could be properly placed. Selecting the descriptive word as above described, the specific section or sections of the various topics can be found, and the attention at once directed thereto, thereby saving much time and anxious thought.

Especially is this true under a uniform classification of the law, where the topic is chosen under well-defined rules of selection and elimination, and each specific proposition has its specific place.

A Comparison of the Use of Treatises and the Use of Case-Books in the Study of Law

By GEORGE CHASE

Dean of the New York Law School

SURPRISE is sometimes expressed that law schools pursuing the "Dwight method" of instruction should profess to cover a larger field of study in a given time than those following the "case method." The explanation, however, is simple, as an illustration will make clearly manifest. One of the standard volumes of selected cases is that of "Cases on Evidence," by Prof. James B. Thayer, who was, until his death a few years since, professor of this important subject at the Harvard University Law School. If a comparison be made between this work and a text-book like Greenleaf on Evidence, as regards the treatment of a particular topic, as, e. g., the "Presumption of the Continuance of Life," the result is as follows:

GREENLEAF ON EVIDENCE (16th edition) vol. 1, sec. 41.

The statement of the law, as here made, is as follows:

"Where the issue is upon the life or death of a person, once shown to be living, the burden of proof lies upon the party who asserts his death. But after the lapse of seven years, without intelligence concerning the person, the presumption of life ceases, and the burden of proof is devolved on the other party; this period was inserted upon great deliberation, in the statute of bigamy, and the statute concerning leases for lives, and has since been adopted from analogy, in other cases; it is not necessary that the party be proved to be absent from the United States; it is sufficient if it appears that he has been absent for seven years from the particular State of his residence, without having been heard from. The presumption in such cases is, that the person is dead; but not that he died at the end of the seven years, nor at any other particular time. The time of the death is to be inferred by the jury from the circumstances."

THAYER'S CASES ON EVIDENCE (2d edition, page 52).

The first case given on this topic is *Doe v. Jesson*, an English decision of the year 1805. It reads as follows:

"This was an ejectment (brought in 1804) for a house and a small parcel of land, which was tried before Rooke, J., at the last assizes at Northampton; and the principal question was whether the action were brought in time within the second clause of exceptions in the statute of limitations, 21 Jac. I, c. 16. The person last seized of the premises from whom the lessors of the plaintiff claimed, was one Thomas Jesson, on whose death in the year 1777, David, his elder brother, took possession of them, and transmitted the possession to the defendant, his grandson. Thomas Jesson left a son John and a daughter Frances him surviving. John was baptized in 1767, and after the death of his father, being then about ten years of age, was put out apprentice to the sea service by the parish, and was seen by a witness on his return from his first voyage about a year after the father's death; soon after which he went to sea again, and had not been heard of since, and was believed to be dead. Frances, the daughter, one of the lessors of the plaintiff, was baptized on the 21st of May, 1771, and afterwards married George, the other lessor. It was contended at the trial by the defendant's counsel that the ejectment was out of time; for it was uncertain when John, the son of Thomas, the ancestor last seized, died, and that the twenty years given by the statute began to run immediately on the death of Thomas in 1777, and consequently expired in 1797; or that, if the statute favored Frances, the daughter, till ten years after the disability of her infancy was removed, at any rate as she was of full age in 1792, she ought to have brought her ejectment in 1802, and

consequently this ejectment, brought in 1804 was too late," etc., etc.

After additional matter in *Thayer's Cases*, equal in length to that above quoted, the decision of the court is reached, which is as follows:

"The time allowed by the statute for making an entry might be indefinitely extended if the construction contended for by the plaintiff were to be admitted. As to the period when the brother might be supposed to have died, according to the statute 19 Car. II, c. 6, with respect to leases dependent on lives, and also according to the statute of bigamy (1 Jac. I, c. 11), the presumption of the duration of life, with respect to persons of whom no account can be given, ends at the expiration of seven years from the time when they were last known to be living. Therefore in the absence of all other evidence to show that he was living at a later period, there was fair ground for the jury to presume that he was dead at the end of seven years from the time when he went to sea on his second voyage, which seems to be the last account of him. That was about the year 1778, which would carry his death to about 1785."

The next case in *Thayer's Cases* supports the rule stated in the last two sentences quoted from *Greenleaf*. The two cases together contain more than ten times as much reading matter as the quotation from *Greenleaf*, and even then they say nothing about the rule in *Greenleaf* that "it is not necessary" in this country "that the party be proved to be absent from the United States."

It thus appears that case-books take a good deal more space to set forth the law on a given subject than do text-books, and even then they may not do this with satisfactory completeness. Even in reading such entertaining books as Dickens' novels, it takes a good deal more time to read a two-volume work like *David Copperfield* than a single volume like *Oliver Twist*, and in reading law-books where careful attention and concentration of mind are necessary, the same truth is even more conspicuously evident. *Thayer's Cases on Evidence* is a volume of 1255 pages and its large pages contain so many words that a careful estimate has shown that this single volume has as much reading matter as $3\frac{1}{2}$ volumes of the size of *Greenleaf's* treatise. And, notwithstanding this, there are various important matters for which *Greenleaf* finds space, which *Thayer* does not treat at all.

Another well-known case-book is "*Keener's Cases on Quasi-Contracts*," by Prof. Keener, formerly professor in Harvard University Law School, and later dean of the Columbia University Law School. This is an extensive work in two large volumes, with pages of unusually large size. Prof. Keener afterwards wrote a text-book on the same subject, but his case-book would make about $4\frac{1}{2}$ volumes of the size of his text-book.

In view of these facts, therefore, it will not seem surprising that a law school using treatises as the fundamental basis of its instruction can cover the same field of legal knowledge in a shorter time than schools which confine themselves to case-books. The case-books can print but a few cases on each topic, and, even so, are oftentimes very voluminous. The text-books extract the pith from many cases and state it in compact systematic form, so that a moderate-sized volume may contain the substance of thousands of cases. *Thayer's Cases*

on Evidence contains about 800 cases, while Greenleaf's treatise sets forth the law extracted from 14,600 cases as is shown by the list of cited cases in its latest edition. Another advantage results from this, viz., that when the law on any subject differs in different states, the treatise writer, with his compact form of statement, can find room to set forth the diverse doctrines, while the author of a case-book cannot print as many cases from the different states as would be necessary to show this, without enlarging his book beyond all reasonable bounds. At a meeting of the American Bar Association a few years since, a lawyer practicing in a Western state, but who had been educated in the East at a school following the case method, complained that the case-books on the law of real property which he had used at the law school had been of little use in preparing him for his practice in the West. A law school using a comprehensive treatise may therefore most effectually prepare its students for practice in different states of the country. It may also readily combine with the study of the text-book the reading of a moderate number of cases, to illustrate the practical application of the legal rules and principles which the text-book sets forth.

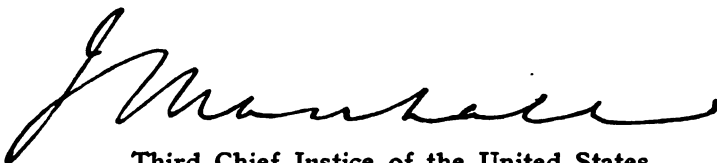
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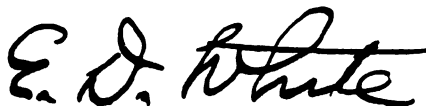
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Eighth Chief Justice of the United States

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The American Law School Review

An Intercollegiate Law Journal

A. F. MASON, *Editor*

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The Shyster Lawyer

By *ASHLEY COCKRILL*
Of the Little Rock, Ark., Bar

THE shyster lawyer has existed so long, and has been so generally referred to as "shyster," that it is a matter of some surprise to learn that the word itself is of comparatively recent origin. The shyster has lived in all ages and countries, yet the word is of United States origin, and even classed by the lexicographers as slang. The word, while not found in the older dictionaries, now has its place in the English language in this country to such an extent that it can no longer be regarded as slang, but must be classed as a legitimate, expressive word.

The origin of the word "shyster" is obscure and doubtful. Some authorities state that it is made from the word "shy," meaning sly, sharp; but as that meaning of "shy" does not obtain in the United States, Webster's suggestion that the word is from the German word meaning excrement, is more likely correct, and certainly more aptly and fully describes the reptile that lives among us. The shyster is indeed the excrement, the

filthiness, of the legal profession. Sportsmen are familiar with a long, lanky, crane-like bird, popularly known and named for its nasty habits as "shyspook." It doubtless occupies the same place among birds as the jackall among brutes, the shyster among lawyers.

The Century Dictionary rather awkwardly defines "shyster" as "one who does business without professional honor, *used chiefly of lawyers.*"

The word appears in the late law dictionaries, and is defined in two reported cases, in both of which it was held to be libelous per se.

Bailey v. Kalamazoo Pub. Co., 40 Mich. 251, 256, was decided in 1879, when the word was very young in the language, though the vermin was then very old in the human race. A man named Bailey was a candidate for Congress on the Prohibition ticket. A Kalamazoo newspaper, apparently opposed to his candidacy, published an article to the effect that the candidate had been

convicted of stealing whisky fines while a justice of the peace, had lost his position as a minister on the charge of adultery, and was "a pettifogging shyster"; the article concluding with, "Pshaw, these reformers are pretty much alike." The court held that to call one a pettifogging shyster was libelous per se, saying:

"We think, also, that the term 'pettifogging shyster' needed no definition by witnesses before the jury. The combination of epithets every lawyer and citizen know belongs to none but unscrupulous practitioners, who disgrace their profession by doing mean work, and resort to sharp practice to do it. The defendant successfully justified the charge by proof that such was plaintiff's general reputation."

In *Gribble v. Pioneer Press Co.*, 34 Minn. 342, 25 N. W. 710, a St. Paul newspaper called one "a half imbecile shyster." The court said:

"The word 'shyster' defined in Webster to mean 'a trickish knave, one who carries on any business, especially a legal business, in a dishonest way,' is evidently capable of having reference to the professional character and standing of a lawyer."

We have already suggested that the word is new, but the thing itself very old. Dickens portrayed him, but did not call him shyster. "Pettifogger," the nearest real English word, is defined to be a lawyer dealing only with petty cases. The shyster of to-day hunts big game, and often scorns the little business of the pettifogger.

Thomas Fuller, the attractive English moralist of the seventeenth century, thus scolded the shyster of his time, known as the "common barrator":

"A barrator is a horse leech that only sucks the corrupted blood of the law. He trades in tricks and quirks; his

highway is in by-paths, and he loveth a cavil better than an argument, and evasion better than an answer. There are two kinds of them; either such as fight themselves, or are trumpeters in a battle to set on others. Had he been a scholar, he would have maintained all paradoxes; if a chirurgeon, he would never have cured a wound, but always kept it raw; if a soldier, he would have been excellent at a siege; nothing but ejectione firma would out him. * * * As for the trumpeter barrator, he falls in with his neighbors that fall out, and spurs them on to go to law. A gentleman, who, in a duel, was rather scratched than wounded, sent for a chirurgeon, who, having opened the wound, charged the man with all speed to fetch such a salve from such a place in his study. 'Why,' said the gentleman, 'is the hurt so dangerous?' 'Oh, yes,' answered the chirurgeon, 'if he return not in post haste the wound will cure itself, and so I shall lose my fee.' Thus the barrator posts to the house of his neighbors, lest the sparks of their small discords should go out before he bring them fuel, and so he be broken by their making up. Surely, he loves not to have the bells rung in a peal; but he likes it rather when they are jangled backward, himself having kindled the fire of dissension amongst his neighbors."

And then this great moralist utters a truth that has been proved up to this good day:

"He lives till his clothes have as many rents as himself hath made dissensions. I wonder any should be of this trade when none ever thrived on it."

It is a fact beyond dispute that no shyster, barrator, or ambulance chaser, by whatever name called, ever thrived long. He has made progress for a

while, has amassed snug fortunes at times, but in the end dies a failure and disgrace, having not only ruined his own life, but brought reproach and dishonor upon the profession of the law.

It is the shyster who has made the legal profession the butt of so many puns and sallies, such as Ben Johnson's proposed epitaph of,

"God works wonders now and then;
Here lies a lawyer—an honest man."

Thought of the shyster prompted Lord Brougham to define a lawyer as "a learned gentleman who rescues your estate from your enemies, and keeps it himself."

It is the shyster who was responsible for the riots of 1780 in England, where siege was laid to the Inns of Court, with the intention of exterminating the whole race of lawyers, that "the skin of an innocent lamb might no longer be converted into an indictment."

It is the shyster to whom we largely owe the popular prejudice against lawyers of this day that is exhibited in the flings and alleged jokes of the press and stage. The shyster, with his pursuit of "skinning" friend and foe, adversary and client, with his effort to stir up litigation rather than to avoid it, to lengthen instead of end it, to hunt in place of shunning it, is largely responsible for the present ever-increasing misguided clamor of the people for the recall of judges.

The shyster of the present day is not always the product of dishonesty and viciousness. He is not confined to the breed of ignoramuses and rascals. He develops frequently with the law student, who starts out with good intentions and honest motives, but who fails to learn, observe, and cultivate the ethics of the profession.

The shyster of to-day appears in many varied forms and phases. We

have the stupid, lazy shyster, whose chief offense is lack of knowledge and industry. He merely ekes out a living in the scums of the law. He is a disgrace, but not so dangerous as the smart, energetic shyster, who is able to hide his true character and keen enough to succeed.

We have the "ambulance chaser," who hangs around the house of the dead and injured, seeking employment as a tinker does trade. He preys upon corporations, and succeeds, not only in doing great injury to the defendant, but also his other victim, his client, whom he so frequently deprives of any share of the loot. Indeed, the most dangerous of shysters is not the man who himself seeks out his own cases, and stirs up his own litigation without fear or concealment, but it is the one who pretends to respectability and secures his business secretly and furtively through the means of runners and hirelings. That shyster, by means of his apparent decency, is able to deceive and dupe the people, juries, and courts, where the common, open shyster would fail. Every community is infested with the shyster in all its forms and kinds, and every community has been infested with it since the beginning of the profession.

It is an easy matter for a young lawyer, who starts out in the pursuit of the law as a practice rather than a profession, who has always in mind fees and money as a first consideration, to slip into bad practices and little by little develop into a genuine shyster.

A disbarment proceeding in a local court recently developed a scheme concocted and worked, which showed great ingenuity and cunning.

Several local insurance companies were placed in the hands of receivers, who found as assets several thousand promissory notes for small sums, aver-

aging less than \$10 each. These notes had been given the insurance companies by policy holders in payment of premiums for policies which were never worth the paper on which they were printed. The makers of the notes were farmers of small means living in remote sections of the state. The receivers had been unable to realize anything on the collection of these notes. Some were barred by limitations, the consideration for them had failed, and the expense and cost of suing the makers at their domiciles greatly exceeded any sum that could possibly have been realized. In winding up the receiverships, it became necessary to dispose of these notes in some way, so they were offered at public sale by the receivers, and were bought for a song by an individual who held himself out as a lawyer.

Under the law prevailing, a man must be sued at his domicile, unless actually served with process elsewhere. The makers of these notes resided in all the nooks and corners of the state, and were rarely found wandering far enough away from their homes or close enough to the domicile of the purchaser of the notes to enable him to get service of process on them. Letters, duns, and threats accomplished something in the way of collections; but these thousands of notes, aggregating \$15,000, although purchased for less than \$100, looked to the ordinary man like a bad trade after all; but not so to the undaunted, energetic person whom we will call lawyer. He was familiar with a statute which permitted summons to be served anywhere in the state on a defendant, where a joint defendant was served in the jurisdiction of the court. The shyster then proceeded to create a joint defendant in this way:

Each of the notes were transferred to a dummy living in the bailiwick of the

shyster. The dummy in turn indorsed the notes to a corporation, which was the creation and creature of the lawyer, guaranteeing their payment. The lawyer thereupon brought hundreds of suits in a local justice court of his own domicile in the name of his corporation against his dummy indorser and the makers of the notes, alleging a joint liability to his corporation, and had summons sent to the constables of the various townships of the counties of the state by whom they were served on the makers of the notes. These farmers thus found themselves sued in a justice court remote from their residence for a trifling sum. Service on them was sought to be justified on the theory that it had been obtained on their codefendant, the dummy indorser, in the jurisdiction of the remote court. Many of the makers of the notes paid, rather than go to the expense of a defense so far from their homes. The suits looked regular. The dummy confessed judgment, and judgments by default were rendered against the makers of the notes, the real defendants. Some of these sturdy farmers, however, refused to be victimized, and exposed on appeal the scheme by which the lawyer had created a sham codefendant. It developed that the lawyer had a contract with the dummy, the sham codefendant, by which he agreed to share the spoils with the lawyer for the plaintiff. In that way the dummy, while nominally a joint defendant, was in reality a joint plaintiff.

The circuit court to which some of these cases were appealed, and before which the fraud was exposed, on motion of the local bar association, disbarred the lawyer, on the ground that he had been guilty of willfully and fraudulently perverting the processes of the courts. The lawyer appealed, but we will as-

sume to call him a shyster until his disbarment is set aside by a higher court, without fear of libel.

The shyster is indeed with us in large numbers. In this day of corporations and large moneyed interests, he is perhaps more numerous and prosperous than in any previous period of the history of our profession. He certainly tends more largely than all other things to disgrace and deprave the profession of law. He is far more harmful to the profession itself than to the community in which he practices. He should be eliminated from the profession and banished from the bar. That cannot be accomplished until public opinion condemns him; and the public will never condemn him until the bar itself does so. The lawyers can never mould public opinion against the shyster until they first get together themselves on the subject. It is a distressing fact that there are many lawyers of fairly good standing who are unfamiliar with professional ethics, and quite a number who care little about observing those ethics after making their acquaintance. The lawyers must first organize, and then as a body make open war on the shyster as a public enemy.

The fight is a hard one at best with the lawyers organized and united, because every attack on the ambulance chaser in legislative halls, the courts, and before the people is met by the shyster with the very plausible defense that the attack is made in the interest of railroads and corporations, to prevent the common people from obtaining their just deserts.

Lawyers owe two duties to the profession and the public: First, to decrease the number of shysters by driving them from the ranks of the profession; and, second, to prevent their birth and increase.

Great difficulty is met in disbarring lawyers. What is everybody's business is nobody's. Lawyers shirk from the disagreeable duty of initiating a disbarment proceeding. Prosecuting officers are not prone to clean up the profession, when more pecuniary profit can be made in other lines. Under the statutes of many states juries are permitted the offending lawyer. Juries ordinarily are unfamiliar with legal ethics, care little about them, and consequently do not convict as frequently and as promptly as they should. The remedy lies in unity of action among the lawyers, through bar associations, which should make it their business, as organizations, first to lay down and teach sound professional ethics, and to enforce those teachings by vigorous enforcements of disbarment statutes.

If the statutes of the state are inadequate, then the lawyer should see to it that they are improved. Failing in that, courts have inherent power to strike offending attorneys from the rolls of practicing attorneys, regardless of the statutes on the subject.

Any member of the bar, or a bar association, can initiate such proceedings, and much can be accomplished without calling upon the usually inadequate statutes on the subject.

No community should be without a local bar association, which, acting in accord with its state association, can do more to exterminate the shyster pest than any other human agency.

The American Bar Association in 1908 adopted a Code of Professional Ethics. The preamble to that code contains the following ringing sentence:

"The future of our republic, to a great extent, depends upon our maintenance of justice pure and unsullied. It cannot be so maintained unless the conduct and motives of the members of

our profession are such as to merit the approval of all just men."

These canons were prepared by a committee of fourteen distinguished lawyers, and condemn, among other things, as unprofessional, the representing of conflicting interests, attempts to exert personal interests on the court, acquiring an interest in litigation, solicitation of business by circulars and advertisements, or touters, stirring up litigation directly or indirectly through agents.

The Arkansas Bar Association has adopted the same canons, and prints them in each annual report of its proceedings.

Every lawyer who violates the ethics of his profession is a shyster. Every lawyer who honors his profession will give his aid in upholding the integrity of the bar, and in joining a crusade against the shyster lawyer.

In *Ex parte Ditchburn*, 32 Or. 538, 52 Pac. 694, the court said:

"Unprofessional conduct on the part of an attorney involves a breach of the duty which professional ethics enjoin. It has been held that it may consist in betraying confidence, taking advantage of, or acting in bad faith towards his client; in attempting by any means to practice a fraud, impose upon or deceive the court, the adverse party, or his counsel; in introducing testimony which he knows to be false or forged; tampering with or suborning witnesses; fraudulently inducing them to absent themselves from and avoid attendance upon courts, when it is suspected or known that their testimony will or may be prejudicial to him or his client; in applying abusive or insulting language to, or assaulting or threatening to chastise, the judge concerning his judicial action; and in fact any conduct which tends to

bring reproach upon the legal profession, or to alienate the favorable opinion which the public should entertain concerning it.

"It is the right and duty of members of the bar to file the necessary information against any attorney who is guilty of any improper conduct in his profession. Attorneys are officers of the court. By virtue of their office great confidence must necessarily be reposed in them, and, if they are unworthy of that confidence, a serious impediment is interposed to the administration of justice. Secrets involving all that makes life worth having are necessarily confided to them by their clients, in implicit reliance upon their professional honor. In the same confidence they have the freest access to all the records of the court, of which they are members. They can, in any action, by their word, irrevocably bind the client that they represent. The bar, more than any other profession, is wholly dependent upon the reputation of its members for honor and integrity; and, after the bench, the members of the bar have the greatest interest in maintaining the honor of the profession, and in purging it of unworthy members."

We call attention to the able opinion of Huston, C. J., in *In re Badger* 4 Idaho, 66, 35 Pac. 839, which was a proceeding by a bar association to disbar an attorney, where he states that there is no duty imposed upon a court more important than that of preserving, to the best of its power and ability, the professional integrity and purity of its bar. He concludes his magnificent appeal for the honor of the bar by saying:

"The rule given by Burns to his young friend Aiken may well be adopted by every member of the profession as a check upon his zeal either for the ac-

quisition of pecuniary results or the attainment of professional success:

"But where you feel your honor grip,
Let that eye be your border;
Its slightest touches, instant pause—
Debar all side pretenses,
And resolutely keep its laws,
Uncaring consequences."

Note

THIS article was published in the March, 1912, number of the Yale Law Journal, and is reprinted in the Review by permission of the author. Since its publication in the Yale Law Journal the Supreme Court of Arkansas upheld the disbarment in the case of Wernimont v. State ex rel. Little Rock Bar Association, 42 S. W. 194. The Supreme Court held that the lower court correctly found that Wernimont was guilty of such malpractice, by his perversion and abuse of the practices of law in that court, as to justify the order of disbarment. We refer the bar and students of law to the able opinion of Judge Frauenthal, which so strongly upholds the dignity and purity of the courts and the legal profession. The court, among other things, said:

"Proceedings for the suspension or disbarment of attorneys for professional misconduct are not criminal, but civil, in their nature. They are not instituted or intended for the purpose of punishment. Their object is to preserve the purity of the courts and the proper and honest administration of the law. Attorneys are officers of the court, made so by its order when they are admitted to practice therein. The purpose of the proceedings for suspension and disbarment is to protect the court and the public from attorneys who, disregarding their oath of office, pervert and abuse those privileges which they have ob-

tained by the high office they have secured from the court.

"The right to practice law is not an absolute right, but a privilege only. It is but a license which the court grants by its judgment of admission to the bar, and which the same court may revoke whenever misconduct renders the attorney holding such license unfit to be intrusted with the powers and duties of his office. The revocation of such license is therefore only a civil proceeding, governed by the rules applicable to all civil actions.

* * * * *

"It is well settled that the power of removal from the bar is possessed by all courts which have authority to admit attorneys to practice. Any attorney may forfeit the license which he has obtained by abusing it, and the power to exact such forfeiture rests with the court which grants it. It is settled that the power to strike from the rolls the name of such an attorney is inherent in the court itself, and is indispensable to protect the courts in their dignity and the public in the proper administration of the law, as well as in maintaining the honor and purity of the profession.

* * * * *

"Such power should be exercised with caution, and only for reasons which would render the continuance of the attorney in practice inimical to the just and proper administration of justice, or subversive of the integrity and honor of the profession.

* * * * *

"Conduct of an attorney in the performance of his duties as such is especially subject to the supervision of the courts in which he exercises that profession. They may compel him to act honestly with his clients and honestly in his practices with the courts. He may

be removed for malpractice and for dishonesty in his profession. This malpractice and dishonesty may consist of the perversion and abuse of the processes of the court to obtain an unwarranted and unjust action. If, by any act of commission or omission, he deceives the court, so that he obstructs or pollutes the administration of justice, or by the suppression of truth obtains a result which the law would not warrant, he is guilty of malpractice, and renders himself unworthy of the privileges which his license and the law confers upon him.

"If an attorney is guilty of unprofessional conduct, he is subject to suspension or disbarment by the court accord-

ing to the degree of the moral turpitude evinced by such unprofessional conduct. It has been held that this professional misconduct may consist 'in betraying the confidence of a client, in attempting by any means to practice a fraud, impose upon or deceive the court, the adverse party, or his counsel, tampering with or suborning witnesses, fraudulently inducing them to absent themselves and avoid attendance upon court when it is suspected or known that their testimony will or may be prejudicial to him or his client, and, in fact, any conduct which tends to bring reproach upon the legal profession or to alienate the favorable opinion which the public should entertain concerning it.'"

The Trained Lawyer

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MAXIMS' and proverbs are often unsafe guides, for they are apt to be expressions of half-truths; but they are not, on that account to be ignored, else we should lose the benefit of whatever wisdom they contain. The phrase, "Vox populi, vox Dei," however handy for the demagogue, does not express an infallible principle of government, even in a pure democracy, for majorities are often mistaken; but we should be foolish indeed, no matter what our form of government, if we failed to heed public opinion.

Deplore it as we may, explain it as we will, we must admit that there is widespread popular dissatisfaction with law and lawyers. The profession has lost its old-time supremacy, its quibbles and

delays are proverbial, its processes are tedious, expensive, and uncertain, and at the bar of public opinion the lawyer stands condemned. However, he may well demand a hearing before sentence of extinction is passed upon him, and may insist that the fickle public, all too prone to look for a scapegoat, has unloaded upon him an odium which he does not deserve.

The whirligig of time brings many changes, and prominence to-day is no guaranty of prominence to-morrow; success no assurance of success to-morrow. Within the narrow limits of earlier times, when education was less widespread and the educated man therefore the more noteworthy, when the three R's constituted the curriculum, and the

three "learned" professions represented the acme of intellectual effort, when trade and finance, for lack of our modern means of quick communication and transportation, must be satisfied with little triumphs, the lawyer was inevitably one of the big men of his community, the "guide, philosopher, and friend" of the grown-ups and the marvel of the tiny tots, of whom it might well have been said,

"And still they gazed, and still the wonder
grew
That one small head could carry all he
knew."

But with the advent of modern inventions, and the gradual widening of the intellectual horizon, the three R's and the three "learned" professions lost their supremacy, and were forced to do battle with lusty competitors, rushing in from every side, insistent upon recognition as equals, if not superiors. Life became inextricably complex, its problems multiplied, its demands broadened, and the task of maintaining justice became Herculean. The old machinery of the law was no longer adequate, and a readjustment became imperative.

To-day this readjustment is still in progress, and only time can tell the outcome; but it goes without saying that the lawyer's contribution to the solution of present-day problems will depend, in large part, upon his training.

We live and move and have our being in an atmosphere of law, and none but the anarchist would even suggest the possibility of organized society without law. So general is the recognition of this fact that theories and vagaries, often fantastical in the extreme, are sought to be foisted upon the public through the medium of laws made by our legislatures, and well-meaning people not infrequently ask the state, through its statutes, to usurp the position of the church

and enforce merely moral obligations. Journalists, statesmen, and political economists may theorize to their hearts' content; but let them reach the point where their schemes are to be put into practice, and their common resort is to the law.

Little wonder, then, that law and lawyers are often condemned for the follies of fanciful reformers, whose chimerical schemes deserve an odium which is unfortunately visited upon the innocent agents rather than upon the responsible authors. But this fact only emphasizes the necessity of sound training for those who make our laws, and particularly for those lawyers who serve as members of the legislature.

The task of the judge on the bench, no less than that of the advocates contending before him, is frequently complicated by the dishonesty, forgetfulness, or stupidity of parties and witnesses, who somehow escape the popular condemnation they deserve, and public indignation on account of the miscarriage of justice is visited upon the law and its votaries. Mistakes of court and counsel, sometimes unavoidable, sometimes due to sheer ignorance, further complicate the situation, and emphasize the truth that, whether as legislator, advocate, counselor, or judge, the lawyer of to-day should be satisfied with nothing less than the highest attainable grade of training. This training falls naturally into four divisions, which we may designate as Preliminary, Theoretical, Practical, and Ethical.

Speaking of the importance of better preliminary training antecedent to the study of law, the American Bar Association's Committee on Legal Education and Admissions to the Bar said, in its report for 1907 (Proceedings A. B. A. 1907, p. 520):

"It ought to be the ambition of the bar of the United States, if it has lost its influence and prestige, to take such measures as may be necessary to prevent any further decline in its influence and to regain the prestige which it once possessed. In order to accomplish this it is essential that the standard of legal education be advanced, as has been the case in the other professions, as well as in the education of the people. This Association may not safely disregard the opinion of Mr. Justice Brewer in 1905 when he declared:

"If our profession is to maintain its prominence, if it is going to continue the great profession, that which leads and directs the movements of society, a longer course of preparatory study must be required. A better education is the great need and the most important reform. That which I wish alone to emphasize is the need of securing in some way to every one admitted to practice the benefit of a preparation therefor far surpassing that which most young lawyers now enjoy."

"It was said by Locke that of the men we meet, nine parts often are what they are—good or bad, useful or not—by their education. That is emphatically true of the class to which we belong. Mr. Justice Brewer once said to this Association: 'There is no place anywhere on the face of the earth for a cheap lawyer.' The statement may well be changed so as to read: 'There is no place anywhere on the face of the earth for an uneducated lawyer.' That is what he meant, for he told us at the same time that a higher education was the great need of the profession. The uneducated lawyer is always a cheap lawyer, although in the end always dear both to his clients and to the public. A

self-respecting profession must always be concerned as to the education of its members.

"In the past twenty years great progress has been made in elevating the standards of legal education in the United States. Many one-year schools have been changed into two-year schools, and the two-year schools into three-year schools. Many schools which had no entrance requirements then now require their students to have had a high school course, and some few are already demanding more than that. Many State Boards of Law Examiners have been established, and the Bar examinations have been made more nearly what they should be. Yet much still remains to be accomplished."

This Committee also reported that more than a high school education should be required for admission, and quoted with approval the following extract from the report of the United States Commissioner of Education for 1892 (Proceedings A. B. A. 1892, p. 523):

"Admission to the bar in all continental countries of Europe is obtained through the universities, which are professional schools for the four learned professions—theology, medicine, law, and philosophy. * * * While in England and America the erroneous idea is still predominant that a collegiate education need not necessarily precede professional study, in continental Europe it is made a *conditio sine qua non*."

Whether the recommendation of the Commissioner and the Committee should be immediately accepted is much disputed. It is true that the American Bar Association in 1907 adopted a resolution recommending that the law schools should require from their matriculates completion of two years of college work,

but this recommendation has not been generally followed.

Judge Franklin M. Danaher, who was for fifteen years a member of the New York State Board of Law Examiners, and assisted during that time in the examination of twenty thousand applicants, said, in a paper which he read in 1909 before the American Bar Association's section on Legal Education (Proceedings A. B. A. 1909, p. 785):

"Primarily, no person should be allowed to begin the study of the law unless he has at least a high school education, or its equivalent, as defined by state educational authority. Our experience is that a high school educational requirement is high enough and practically sufficient, and the extreme limit of what we can get. An examination of our records show that there is very little, if any, difference in the percentage of high school graduates and collegiates. We cannot make the profession an aristocracy, nor keep therefrom the many ambitious young men who seek its fatuous wealth and fame, and to ask for more than the high school requirement would be to raise a genuine opposition to all rules and a clamor which would prevent the getting of even that concession. We lay particular stress upon the condition that the educational requirement should be possessed prior to the commencement of the study of law. One reason is that a student cannot divide his time and attention between his work in obtaining his pre-educational conditions and his law studies. One must, of necessity, give way to the other, with the practical result that the law work will be neglected until the educational condition is worked off, to the general demoralization of the student, who will come to his examinations unprepared and illy fitted to enter upon the practice of his profes-

sion. We assume as admitted the necessity of some pre-educational qualification. In addition it has this practical merit—it will be a discourager, and will prevent many uneducated and inefficient persons from beginning the study of the law. The time and effort required to obtain, after eighteen years of age, a high school education, or its equivalent, will be almost prohibitive, and will certainly decrease the number of applicants, and thus render competition at the bar less deadly, tend to make the profession reasonably safe and sure as a means of livelihood, make it more honest, and improve its conditions and general morale."

In his report for the year 1909 the New York Commissioner of Education says:

"In January, 1909, the New York State Bar Association appointed a committee of three to consider the recommendations of the American Bar Association relative to legal education.

"The second resolution recommends 'the adoption of a rule making it a necessary condition of admission to the bar that the candidate shall have an education equivalent at least to that required for graduation from a high school.'

"The third resolution states that, in approving a high school education as a minimum requirement in general education, the 'Association entertains the opinion that the interests of the profession and of the state would be promoted if all the candidates for admission to the bar should be required to have an education equivalent to at least two years of a college course.' This third resolution plainly commits the American Bar Association to the fourth principle of the National Association of State Universities in their attempt to define the standard American University.

"Commenting on the good to come from the adoption of resolution 2, the State Board of Law Examiners says:

"Even that, we think, demands too much. With Massachusetts, for instance, and other states, having no educational requirements for admission to the bar, and New York laboring for 27 years to reach the high school preliminary educational requirements, how can we expect public opinion in many of the states at once and without preparation to sustain the establishment of a high school standard, where no educational test has ever existed?"

"New York has one of the best secondary school systems in the world, with either a high school or a registered academy or the means of obtaining a high school education within the reach of every boy in the state; yet New York began with a simple educational requirement in the premises in 1881, and did not reach the present high school standard until 1908.

"There are many states in which it is practically impossible or very difficult to obtain a high school education, and for that reason it would not only be unfair, but contrary to public opinion and impracticable, to exclude all students in such states from admission to the bar. It would be better to make haste slowly, and for those interested in raising the standards to ask primarily that all states which have no educational requirements for admission to the bar establish a simple and easily reached standard as a beginning, in the hope that they will ultimately reach the high school requirement, and that those which have less than a high school requirement should move speedily towards adopting it.

"Commenting on the third resolution the State Board of Law Examiners says:

"Theoretically this resolution is

right, but we do not think that all candidates for admission to the bar should be required to have an education equivalent to at least two years of a college course; that is, two years beyond high school. There is a practical side to this proposition as well as a theoretical one. * * * The proposition to exclude from the bar all the bright and ambitious young men whose environment will not permit them to get beyond high school or to go to college may be idealistic; but, if it is, it is also impracticable. A high school education is practically sufficient and sufficiently prohibitory."

The situation is still further complicated by the reluctance of many educators to unduly prolong the age at which the young lawyer may establish himself. For instance, Professor H. E. Armstrong, a member of the Mosely Educational Commission, sent from England to the United States in 1903, says (U. S. Commissioner of Education Report for 1904, p. 1599):

"A course of study prolonged to an age bordering on thirty, rather than twenty, implies a most serious limitation on the period during which the individual exercises independence. It casts an improper burden on parents, and it postpones the age of marriage unduly."

Governor Baldwin, of Connecticut, has taken a similar view, and in an article written some years ago, while a professor at Yale Law School, he said (U. S. Commissioner of Education Report 1904, p. 1686):

"What is the age at which a student who has decided upon what is to be the occupation of his life should enter upon the special preparation for it?"

"It is clear that such a decision cannot reasonably be made or recognized until he has at least neared the stage of manhood. Nor should the door of pro-

professional education be opened to any one who has not received so much of secondary education as is necessary to equip him for the common duties of an American citizen. The man must be shaped before the lawyer.

"Most law teachers will probably agree that the study of law is best begun by the ordinary man at the age of 20 or 21. If he undertakes it earlier, he is apt to be found lacking in mental discipline and general information. If he undertakes it later, he is apt to feel it irksome to learn the elements and grammar of a new science, which is also an art, and to give undue emphasis to that part of it which most resembles whatever may belong to the studies he has last pursued.

"* * * A man must begin his legal education at 20, if he would complete it by 23 or 24, and to compel him against his will to defer beyond that his entry upon the practice of his profession is to wrong both him and the community. He has been denied the freedom that belongs to manhood. He has been forced to exchange a year of practical experience at the bar for a year of theoretical instruction in studies for which he did not care. The community also has lost a year of service from an educated citizen.

"The time has come when we must confess that our American university system has attempted the impossible. It has aimed at adding to the education furnished at the English university the education furnished at the German university, and at requiring both from all. The American people have been strangely patient under this strain. They are patient no longer. They are glad that those whose life is to be that of a scholar should have these ample opportunities for culture. They are determined that

those of their sons who are to live less among books and boys than among men should begin their life work in time to reap some of its rewards before the flush and joy of youth are past. There should be some chance for a man of 25, although he be devoted to a learned profession, to have a wife and home. One of our leading medical journals has recently declared that the existing state of things is right, and that young men who enter the professions must recognize the fact that they cannot, in many cases, afford to be both educated and married. No educational system which justifies such views can stand. No country which holds them, however great and powerful it may be, can long preserve the strength and purity of its institutions."

So far, therefore, as preliminary training is concerned, we may safely say that at least in the Northern states nothing less than a four-year high school course will be regarded as sufficient. The advisability of gradually advancing this requirement so as to include one or more years of college work must be determined according to the peculiar circumstances of the various sections of the country.

Some years ago, when the law school was on trial, there were many able champions of the law office as a proper place to study; but the growing success of the schools, coupled with the ever-increasing demands upon the time and energy of competent practitioners, has practically settled the question in favor of the schools. On this subject the report of the American Bar Association's Committee on Legal Education for 1907 says (Proceedings A. B. A. 1907, p. 530):

"The Committee on Legal Education and Admissions to the Bar, in a report

which it submitted to this Association more than a quarter of a century ago, said: 'There is little, if any, dispute now as to the relative merit of education by means of law schools and that to be got by more practical training or apprenticeship as an attorney's clerk. Without disparagement of more practical advantages, the verdict of the best informed is in favor of the schools.' The changes which have occurred since that report was made have only served to increase the relative advantages which the schools afford when compared with those of an attorney's office. The schools have been greatly improved, their courses of study have been lengthened, and the conditions governing the admission and graduation of students have been advanced, so that the education which they afford is in all respects much superior to what it was at that time. And during the whole of this period the advantages which the offices afford have been growing less and less, owing to the changed conditions under which the business of the lawyer's office is now conducted.

"In the former days a student in an office hoped to acquire practical knowledge by copying papers and performing clerical duties. But this, which has been regarded as the one good and useful element in the old system, has practically disappeared. The truth is that in the office of a busy and successful lawyer of to-day the student copies nothing and sees nothing. The professional stenographer and typewriter does the work from which the student in the former years derived his chief advantage. And so it has come to pass, as Mr. Justice Finch has said, that 'the flying symbols and click of the keys have distanced the slow travel of his pen, and he sits outside of the business tide ebbing and

flowing around him like some solitary on the sands, tired of the book that has grown dull.' The student in an office is to-day little better than an errand boy. His study of the books is desultory and quite unsystematic. To-day he reads 15 pages, to-morrow none, and the day after 100. He tries to read carefully and conscientiously; but there is no one to question him on what he reads, and he forgets in one week what he read the week before. Much of what he reads he does not understand, and the explanation which he would be glad to have the busy lawyer has no time to give and the student no opportunity to ask. The fund of information which he thus acquires and really makes his own under such adverse conditions is small. As to the training of his intellect, the development of his thinking and reasoning powers, there is apt to be none at all.

"The advantages which the schools afford are, on the other hand, readily apparent. In the law school the student is taught to regard the law as a whole, and to consider the relation of one part to another. He obtains an acquaintance with general principles, and acquires the habit of analyzing and defining legal conceptions. He is taught to look upon the law as a series of rules and exceptions, and he learns to mark off the exact limits of ascertained principles. The inherent difficulties in the subjects studied are explained to him, and he obtains clear conceptions, and comes to understand how important it is that his knowledge of legal principles should be accurate and precise. He not only becomes familiar with leading cases, but he is taught how to discriminate and reason. The daily examinations by the instructors in the presence of rival students not only make him careful and thoughtful in his reading, thereby fixing

the principles more firmly in his mind, but they arouse within him a generous emulation, which inspires him to the best of which he is capable. He forms habits of systematic study which are invaluable to him.

"The knowledge which the student acquires in an office, when contrasted with that which he obtains in the school, is fragmentary in the extreme, and the system of studying in an office, when contrasted with the system of law school instruction, is wasteful both of time and labor. Years ago Chief Justice Waite wrote: 'The time has gone by when an eminent lawyer, in full practice, can take a class of students into his office and become their teacher. Once that was practicable, but it is not now. The consequence is that law schools are now a necessity.' If law schools were a necessity in his day, they are still more so in our day. And if the schools are a necessity, it is because of the fact that the law offices do not afford an adequate and sufficient preparation for those who seek admission to the ranks of the profession."

Speaking along these same lines, the United States Commissioner of Education in his report for 1909 (page 772) says:

"The object of the student is not simply to acquire a fund of information regarding legal questions, but to train himself to think, reason, and express himself with force and with accuracy in his application of the law. In the methods of instruction in a great majority of the law schools the text-book system, the case system, and the lecture system are all used, while the quiz in the presence of fellow students, together with the eager questions and answers which are constantly arising among a large class of young men pursuing the

same subject, cannot fail to impress indelibly upon the mind each day's work. The frequent duty of drawing all legal documents, and their criticism in the classroom, enable the student to understand the reason for each, and teach him to recognize errors in his own and in his adversary's work. The student is enabled to join a coterie, or club, of his fellows whose purpose is the discussion of moot cases and the cultivation of forensic eloquence. The superiority of a well-conducted law school over the method of solitary application usually pursued in an attorney's office can hardly be estimated. The stimulation afforded in classwork, together with the constant friction afforded by research among a body of ambitious young men, are powerful incentives to close, analytical study."

In 1870 there were in the United States 28 law schools, having 1,653 students; in 1910 there were 114 schools, with 19,567 students. Speaking of the growth of the schools, the United States Commissioner of Education in his report in 1910 says (page 1030):

"The increase in the number of law students in the last two decades has been phenomenal. While the number of students in medicine and dentistry has been decreasing, the number in law has been constantly increasing."

But, granting the superiority of the law school over the office, we have still to answer the question: How shall the schools train the future lawyers? One of the most interesting controversies of recent times among legal educators is waged about the method of instruction, and there have not been wanting ardent champions of the lecture, text, and case systems. However, most of the leading law schools now use the case system at least in part, though few of them employ

it to the entire exclusion of both the other methods. Dean Langdell, of Harvard, is generally credited with bringing this system into vogue, and in its development he has been ably seconded by Dean Ames and numerous other well-known workers in this field. Legal educators are practically agreed with Professor Williston when he says (A. B. A. Proceedings 1908, p. 781):

"All will agree, I think, that the law school must aim to give a training which will give both power of reasoning in dealing with a new question and also as considerable a stock of positive knowledge as possible. Most lawyers will agree that the first is more important than the second. It has always been recognized that the mastery of the general principles of law and the logical faculty to follow these principles to their legitimate consequences is what gives power to a lawyer, rather than a great store of knowledge of the law on particular points, valuable as such knowledge is."

But not all teachers of law are agreed as to the exact plan which should prevail in imparting instruction, even where the case system is used exclusively or in conjunction with the other methods. Some schools, for instance, require that all students shall register for all courses, except a few comparatively unimportant, highly specialized ones, which are made optional. Other schools make much, if not most, of the course, optional, even as to essentials. Professor Huffcut has ably summed up the argument against this elective system as follows (Proceedings A. B. A. 1904, p. 580):

"It seems to me that the elective system, in order to justify itself in the law school, must show, first, that it familiarizes all students who receive a degree with the fundamental and vital topics of the law, with the chief subject-

matter of the profession; and, second, that it produces not merely general legal discipline, but also technical professional efficiency, not merely the ability to acquire, to weigh and decide, but the ability to do, to act promptly in any emergency, to know and to practice the law. When we observe that under this system a considerable fraction of students have taken their degrees without any study of Equity, or Agency, or some other fundamental topic of the law, and that all are free to do so, we cannot but conclude that the elective system does not meet the test of fitting men in the best possible way for the practice of their profession, or of assuring the highest possible potential and practical efficiency."

So far as instruction in the theory of law goes, we may, therefore, dismiss the subject with the remark that the case system, whatever its limitations and difficulties, has come to prevail in most of the leading schools, and in most of them, too, the degree of election allowed is rather meager; the tendency being to require all essential subjects from all students.

When we approach the subject of the lawyer's training in the adjective law and in the intricacies of practice, we are met with a square conflict of opinion, which takes form in a double argument; the one dealing with the question whether law teachers should be or should have been practitioners, and the other whether the schools, because of their natural limitations, should not leave the teaching of practice to the office.

On the first question, viz., whether law teachers should be or should have been practitioners, we have strong advocates on both sides; for instance, Professor Vance, of Yale, speaking of the importance of training of law students, says

(*American Law School Review*, 3:1, p. 4):

"Recognition of this as the proper function of the teacher compels the lawyer in the law school to make his election as to whether he will serve his clients or his students. He cannot serve both as they should be served. If the law is a jealous mistress in the courthouse, she is a veritable tyrant in the modern law school. The teacher who endeavors to teach properly courses extending over seven or eight hours a week by the so-called case system may spend all of his possible time in preparation, without any regard whatever to union limits, and yet feel no little trepidation as he faces a class of fifty or a hundred bright young men, who have spent hours in reading, comparing, and discussing the cases on the subject-matter of the lecture, and who have been trained to demand the reason why.

"* * * The nature of the work required of the present-day teacher of law, as shown above, compels him to be a student of the science of the law as a whole to an extent never possible to the lawyer in active practice."

Professor Vance is not without support in his attitude toward the necessity of divorcing practice and instruction, and it is only fair to say that some of the ablest teachers have devoted their whole energy to the classroom with little or no previous experience as practitioners. On the other hand, there are not wanting quite as ardent champions of the importance of having the teaching staff recruited from the ranks of lawyers who are or have been engaged in practice. For instance, Dean Stone, of Columbia, said at the recent convention of the Association of American Law Schools at Boston (*American Law School Review*, 3:1, p. 13):

"It is believed that there is no more dangerous tendency in legal education at the present time than the too common practice of calling young men just graduated from a law school to the important work of law teaching, exclusively private law subjects, before they have had actual experience in practice. In making this assertion I am not unmindful of the brilliant and successful exceptions to what I believe is the sound general rule. If it is true that the function of the law school is to approach the study of law from the theoretical and scholarly side, it is equally true that it must not become so academic as to separate itself from the profession which it represents and for the practice of which it undertakes to train its students. Yet how can this result be avoided if its teachers, or any considerable number of them, have no actual experience in its practice and have never acquired by contact its sentiments and traditions?

"But can the teacher, having had experience in practice, be depended upon to approach his subject from the theoretical viewpoint? I am aware that the opinion exists among law teachers and administrators that he cannot, or at least will not, so approach it, and that the practice of the profession for any considerable period tends to destroy his capacity for what Professor Williston, in his admirable address of two years ago, called 'idealism in law teaching.' This is a grave charge to lay at the door of any profession, if true; but my observation leads to the conclusion that it is not true. The fact is that competent teachers of law are born, not made exclusively by training or environment. Of the thousands who prove themselves competent students or practitioners of the law, only a few can be depended upon to become successful teachers of

law. Every law school administrator recognizes that success at the law is no guaranty of success in the professor's chair, not because the incumbent has been in practice, but because he does not possess the gift. This, then, does not mean that success at law is inconsistent with successful law teaching. There are no data on which to base the conclusion that any lawyer who once possessed the gift of teaching law has lost or impaired it by engaging or continuing in practice. I have known personally too many examples of law teachers whose capacity for idealism in law teaching had been stimulated and expanded on the one hand, as well as tempered and controlled on the other, by experience in practice, to concur in any such view.

"To insist, as a general rule, that the law teachers must qualify by a reasonable period of experience in practice, seems not an unreasonable requirement, although it will undoubtedly add to the burdens and perplexities of the law school administrator. He should, however, encourage the junior members of his teaching staff, having demonstrated capacity for law teaching, to continue in practice for a period sufficient, at least, to give them the practicing lawyer's point of view, and to enable them to acquire a first-hand knowledge of those practical considerations which influence or control the application of legal theories. Ultimately the teachers in the law school, or most of them, should give their whole time to the work of law teaching and to promoting the interests of the law school as an educational institution. This would be the ideal condition. But, personally, rather than forego the benefit to legal education of instruction by teachers experienced in practice, I would gladly retain in a law faculty a number of practicing lawyers,

provided, of course, they possessed the gift of teaching law from the theoretical point of view and devoted themselves unreservedly to the interests of the school. A faculty so constituted would, to my mind, be far preferable to one composed exclusively, or largely, of teachers without actual experience in practice, and would insure the full performance by the school so equipped of its functions as a vocational school and as an educational institution in a larger and broader sense."

To this testimony may be added that of Professor Mechem, who said (*Proceedings A. B. A. 1906, II, p. 179*):

"I think, moreover, that we shall make a mistake if we put into our law schools too many men as teachers who have had no practical experience at the bar. It is, of course, true that the mere fact that one is a good or even a great lawyer or judge gives no assurance that he will be a good teacher; but, on the other hand, I believe that, in the main, no man can be really the best teacher of the law who has had no experience in practice. Law is so distinctly a practical science, it exists so necessarily for purely practical ends, so many elements enter into its operation and effect beside pure theory or clear logic, that some experience with its practical side seems to me to be essential, not only to its fullest comprehension, but also to the most sympathetic and helpful attitude toward the needs and problems of those who are to practice it. Law as it looks to the theorist in his study, and law as it looks to the lawyer in consultation or the courtroom, are often radically different things. One of the greatest advantages of the so-called case system is, in my judgment, to be found here: That student and teacher alike are facing practical problems, so far as one who lives simply in

the experience of others can do so. It is, moreover, essential that the law schools shall keep in touch with the bar. They must command its respect, inspire its confidence, and receive its support. An occasional infusion of new blood, drawn from the active ranks of the profession, not only helps to accomplish this, but also serves to prevent a whole faculty from becoming too doctrinaire in its habits and tendencies of thought."

Professor Terry, of Columbia, is quite as emphatic in the conviction that law teachers should be or should have been practitioners. He says (Proceedings A. B. A. 1906, II, p. 22):

"That brings me to the suggestion that perhaps it was wrong, educationally speaking, for a law school to have upon its faculty or in its corps of instructors men who had been in practice, or are in practice at the time when they are also instructing. I think the reverse is the fact, and I think so because legal education involves not only education, the implanting in a man's mind of the ability to think two thoughts consecutively, but also knowledge. There are two rails which must carry a car. That is where legal education, being an applied science, differs from a great many sciences. On the one hand, learning the alphabet is getting pure knowledge. It does not involve any logical faculty, any ability to reason; but it is vital. Then you have pure logic, which does not involve anything practical at all. If a man is going to deal with the affairs of life, whether as a lawyer or in almost any other capacity, he must have the reasoning faculty; therefore he must have exercised his mind in dialectics, he must know logic.

"Now, those two things are united, I think, in the clearest possible way in what we call legal instruction; and, unless a

man gains both of those things, he does not become a good lawyer. A man who has been in active practice in the forum, whether he is there at the time he is instructing or has been there before, is, it seems to me, in the best possible position, assuming that he has the other requisites of a law teacher, to inspire students to learn the things which they want to know and to exercise the reasoning faculties which they wish to develop. And I say this in spite of the conspicuous examples of eminent law teachers who have never had any actual experience in practice. There are exceptions, you know, which prove the rule. I think the truth lies in the other direction, and certainly it is a matter of almost everybody's experience that the law student takes more notice, has more enjoyment in his course, if he can see through the illustrations, through the suggestions of the instructor, something of the actual forum in which he is going to apply his knowledge."

So much, then, for the question whether the professor of law should be or should have been a practicing lawyer. We may easily conclude that the answer to this question must be in the affirmative, always remembering, however, that the exceptional man may prove to be a competent teacher, though he has not been a practitioner, and that, on the other hand, not every successful practitioner is a good teacher.

The second question, namely, whether schools should try to teach the intricacies of practice, is a discussion which still wages merrily. In the olden days, when the lawyer's office was the sole place of preparation for the bar, the youthful Blackstonian was apt to be rather better prepared in practice than in the theory of the law; but, when the schools gradually absorbed the task of

law teaching, the opposite was, and still is, quite likely to be true. In other words, the theoretical as distinct from the practical side of law is quite generally exercised to a degree out of all proportion to the relative difference and importance of the two branches, and it is precisely here that the failure of the schools has been most apparent. Just now the pendulum is swinging back, and there is no end of discussion about the proper way of obtaining suitable training on both sides of the law. For instance, Dean William Draper Lewis, of the University of Pennsylvania, says (Proceedings A. B. A. 1906): "Any law student intending to practice law should know his profession as an art as well as a science." The Law Examiners of the state of New York have had abundant opportunity for investigation and comparison and one of their number, Judge Danaher, said in 1905 (Proceedings A. B. A. 1905, p. 556):

"I say, from the standpoint of the examiner who has studied the subject at first hand, and under the direction of the section of Legal Education, that the teaching of pleading and practice, as far as the law schools are concerned, is an absolute, dead failure. It was the rule in New York up to 1895 that all students should spend not less than one year in a law office. In 1895 the judges of the Court of Appeals, in revising the rules regulating admission to the bar, changed that requirement, and the rules now prescribe that a man may take his three years of law study, two years if he is a college graduate, either in a law school or in a law office, or partly in one or partly in the other. We have come in the state of New York to consider that change unwise. We find that, no matter how much a young man may know about substantive law, how much he may know about the Constitution, about

Torts and about Insurance, he knows little or nothing about either Practice or Pleading. So we now have under advisement the necessity of compelling all applicants for admission to the bar to spend not less than a year in the office of a lawyer to learn those important subjects in which they are most deficient."

Lucien H. Alexander, of Philadelphia, said in the same year (Proceedings A. B. A. 1905, p. 624):

"But there is another development of the law school system with which the profession must contend, and which must be overcome if the bar is to retain its prestige, but which, like the proverbial cat with nine lives, will be difficult even to scotch; indeed, at present the cat seems to have each life in full vigor. I refer to this continual thrusting of law school graduates upon the bar with no adequate conception of practice and methods of procedure. It is unnecessary to discuss the fact, or attempt to prove it, for the American Bar Association knows that as yet no law school has successfully solved the problem of teaching practice thoroughly. Some have zealously striven to do so, and may think they have; but others deny it, and declare: 'We have not the time in a three-year course to do it properly.'

"I need only refer to the discussions in 1902 upon the able paper of Professor H. R. Redfield, of Columbia, indicating the deficiencies of law schools in teaching practice, particularly the remarks of Professor Joseph H. Beale, Jr., of the law schools of Harvard and Chicago University, in which he clearly proved that a law school faculty, in preparing the curriculum for a merely three-year course, cannot afford, in the interests of the student, to apportion a sufficient amount of time to teach practice thoroughly. He said: 'Is the best

thing we can do for a student to teach him how to go into court and conduct a litigation? Evidently not. The first thing to do is to teach him law, the substance and the soul of law. This should take more than three years, but that is all the time we have to give to it. We have to lop off something. * * * And he proceeded to show that in a properly apportioned three-year course it was necessary to eliminate much of the teaching of practice which would be desirable if the course were longer.

"This is the issue the bar of America has got to face in dealing with the law schools, and face it squarely we must. If, as Professor Beale suggests, for a law school to teach a student how to go into court, and conduct a litigation is not the best thing that it can do for him—which I do not dispute, the best of the law schools having now but a three-year course—then we of the bar must recognize that one of the best things that the courts and the bar of America, acting in behalf of the people of the nation, can do for the proper development and maintenance of the administration of justice in our country—aye, an essential thing to do—is to see to it that no man shall be admitted to the bar, and thereby granted the valuable franchise to practice on behalf of clients, unless he is trained so that he knows how to go into court and conduct a litigation and conduct it properly. This is another plain, simple duty which the profession owes, not only to itself, but to the public."

It must be apparent from these quotations that, though the law schools of the country have made tremendous strides, they have still failed to settle one of the most vital questions. Admittedly they have mastered the problem of well-balanced instruction in the science of law and have proven them-

selves worthy of patronage; but they have still to grapple with the problem of effective instruction in the art of law. In this respect legal education is far behind medical education. No reputable medical school attempts to prepare its students for practice in less than four years; a large part of the last two years being given to practical work both in hospitals and dispensaries. Law students, on the other hand, are being sent to the bar for the most part with an equipment which enables them to ascertain the rule governing in a particular situation, but gives them no adequate idea of how to take steps necessary to obtain redress for a client whose rights have been infringed. Legal educators are quite agreed that the present three-year course is none too long for proper scientific instruction in the law, and it is not unlikely that relief from the present embarrassing situation can be obtained only by adding a fourth year of instruction, thus making the law and medical courses of equal duration. Some states, for instance, New Jersey, require that even the graduate of a three-year law school must serve an apprenticeship of eighteen months in the office of a New Jersey practicing lawyer before he may be admitted to the bar, and the New York Examiners have recommended that a period of apprenticeship in an office should precede admission.

Professor Williston, of Harvard, says (Proceedings A. B. A. 1908, p. 792):

"It is probable that in the future it will more and more be thought requisite that a young lawyer, after completing his course at a law school, spend a novitiate in the office of an older lawyer already established in practice. The extreme length of the German training appalls and repels us; but the double period of training, that in the theory of law

by study at a university, and that in practice subsequently by actual work under the direction of a competent person, seems the best way to make sure of giving a sound theoretical training, and also giving some training in practice and local rules, as well as in the art of applying the power which the law school training should have given."

However admirable an apprenticeship may have been in the days when practitioners of ability had the disposition, time, and energy to instruct their juniors, that time is now past; and, just as the school has superseded the office as a place of instruction in the science of law, so must it in large measure supersede it in teaching the art of law. Not that the schools can hope to ever entirely bridge the gap between actual experience and the lack of it; but I see no reason why they cannot give a thoroughly systematized course of instruction in pleading, evidence, practice, and procedure. The very things which have made law offices not suitable places for theoretical instruction will also render them not suitable for practical instruction, and the same reasons which have compelled medical schools to add a fourth year, and to insist upon some practical work, will likewise drive the best law schools to maintain a four-year course, a large part of which will be designed to fit the men for the practical conduct of their professional duties. The prime object of law schools is to fit men for the arduous duties of the bench and bar, and this object is not attained by grinding out graduates whose heads are full of learning which they do not know how to use. True, if they are fortunate enough to form an association with an able practitioner, they may eventually acquire the facility of putting their scientific knowledge into effect; but the schools should be re-

lieved of this burden, and not stamp with the seal of their approval men who are not trained in the art of their profession. The medical student and the engineering student is expected to be able on graduation to do things, and not simply to be qualified for an apprenticeship in the office of a practitioner. So, too, the law graduate ought to be able to assume the discharge of his duties as a practitioner, and not sent out, as unfortunately too many now are, wholly unprepared for practice.

There remains one other phase of my subject, namely, the ethical training of the lawyer. Judge Alton B. Parker, President of the American Bar Association, said in 1907 (Proceedings A. B. A. 1907, p. 340):

"There is no profession, trade, or business whose members as a body have higher ideals than have lawyers as a class. We cannot deny that there are many among them with no higher aim than mere money-making, nor can we say that there are not a considerable number who are so destitute of character as to disgrace the bar. Unfortunately this is true. But such are the minority. The great majority are idealists, who love justice, and seek it, not only for clients, but for society at large."

The American Bar Association's Committee on the Code of Legal Ethics said, in recommending the adoption of the code in 1906 (American B. A. Proceedings 1906, I, p. 601):

"With the marvelous growth and development of our country and its resources, with the ranks of our profession ever extending, its fields of activities ever widening, the lawyer's opportunities for good and evil are correspondingly enlarged, and the limits have not been reached. We cannot be blind to the fact that, however high may be

the motives of some, the trend of many is away from the ideals of the past, and the tendency more and more to reduce our high calling to the level of a trade, to a mere means of livelihood or of personal aggrandizement. With the influx of increasing numbers, who seek admission to the profession mainly for its emoluments, have come new and changed conditions. Once possible ostracism by professional brethren was sufficient to keep from serious error the practitioner with no fixed ideals of ethical conduct; but now the shyster, the barratrously inclined, the ambulance chaser, the member of the bar with a system of runners, pursue their nefarious methods with no check save the rope of sand of moral suasion, so long as they stop short of actual fraud and violate no criminal law. These men believe themselves immune. The good or bad esteem of their collaborators is nothing to them, provided their itching fingers are not thereby stayed in their eager quest for lucre. Much as we regret to acknowledge it, we know such men are in our midst. Never having realized or grasped that indefinable ethical something which is the soul and spirit of law and justice, they not only lower the morale within the profession, but they debase our high calling in the eyes of the public. They hamper the administration, and even at times subvert the ends, of justice. Such men are enemies of the republic; not true ministers of her courts of justice, robed in the priestly garments of truth, honor, and integrity. All such are unworthy of a place upon the rolls of the great and noble profession of the law."

Judge Parker has been ably seconded by Professor Mechem, who said in 1906 (A. B. A. Proceedings 1906, II, p. 185):

"Never was there greater need of right standards in this matter than at

the present moment. The whole character of the lawyer's relations and functions seems in danger of undergoing change. The influence, if not the taint, of commercialism is over the profession. To the time-worn popular complaints of the ethics of the legal profession, that a lawyer will espouse either side of any cause for money and sell his talent to the highest bidder, there is added in these days the criticism by men in high places that the best effort and ability of the profession are constantly retained by the greatest enemies of our people, the huge, soulless, monopolistic combinations of capital and labor, standing to exact toll at every gateway of commerce, at every vantage ground of opportunity, at every storehouse of natural wealth which should be common.

"I do not undertake to say how much of this is true, how much mere slander, and how much based upon a misapprehension of the real situation. It is evident enough that there is a danger here, and, in my judgment, the law schools have not done their duty if they do not instill in the minds of the students such notions of the dignity of their calling, of their relations to the law and to the public, and of their duty to truth and honor and right conduct, as will enable them to withstand the temptation, if it does come, to prostitute their talents to ignoble ends and to sell their birthright for a mess of pottage."

Mr. Mark Norris, of Michigan, speaks similarly as follows (A. B. A. Proceedings 1906, II, p. 69):

"The lawyer has a standard of ethics as high as can be asked. He who obeys it will not only command the confidence of the community, his clients, and the court, but need have no fear in that day when he shall stand at the bar of a tribunal in whose verdict there will be no error and from whose sentence

there is no appeal. We have codes of legal ethics in many states, and able text-books on the same subject; but are they used in the schools and offices? Are the students examined thereon? An examination of the courses of instruction of many law schools and the papers of many an examining board has satisfied me that little is taught on this subject and less asked by our examiners.

"Correct ethical conceptions are the foundations of what we call character, and while I am aware that the best place to teach practical ethics is by the fire-side in the home, and that nothing is more difficult to inspire in the human heart than right desires, yet my experience in college, the law school, and as a member of the board of law examiners in my own state has given me a confirmed opinion that we should lay greater stress on instruction and examination in the ethics of the profession.

"We cannot afford to neglect education in character. It, equally with learning, is necessary to success and greatness at the bar. I would not be understood, however, as believing that any merely theoretical instruction in ethics will avail to implant in the human heart that deep desire for right living which must always precede the practical application of correct ethical standards to the daily life. I do wish, however, to urge that we cannot afford to neglect instruction along that line, so that the rising generation of the profession may not err from lack of knowledge.

"Education is not only the inculcation of the experience of the race. It is also the acquisition of knowledge from example and the experience of the individual, and I believe it to be true that the best instruction in ethics is derived from example and personal experience. Nevertheless, the fact affords no excuse

for our neglecting to draw lessons from the history of the past."

In the light of this testimony, therefore, we may state that the ethical training of the lawyer should take its proper rank, and that all our efforts to improve the preliminary, theoretical, and practical education of the lawyer should be animated by the conviction that, unless we make good men, as well as successful men, we are not contributing to the advancement of the race or discharging our duties as members of an honorable profession. Well, then, may every school in the land require that its students receive systematic instruction in the ethical duties of the lawyer, and, now that the American Bar Association has made its code of ethics available, there is no reason why we should look further for a test. Let the principles there enumerated be firmly imbedded into the minds of the candidates for admission to the bar, and we shall have made a distinct advance toward realizing the nobler purpose of our profession. It is true that no code of ethics and no course of training can entirely eliminate those who are unscrupulous and unworthy, nor will our efforts always achieve justice; but we may at least enjoy the sweet consolation that comes from the conviction of duty well done, and, when disaster defeats our purpose, as sometimes it will, we may take refuge in the fact so beautifully expressed by Lowell:

"Truth forever on the scaffold, wrong forever on the throne,
Yet that scaffold sways the future, and
behind the dim unknown
Standeth God within the shadow, keeping
watch above his own."

To the lawyer of America, properly trained for his task, there open up possibilities which stagger the ambitious.

To others are intrusted the spiritual and physical well-being of the race, but to him is committed the prime task of maintaining justice, of ministering at the throne of the impartial goddess with such loyalty that every man, no matter how humble his origin or how exalted his station, shall receive his exact meed

of reward or punishment, and that America, blessed among nations with responsibilities and opportunities that mark her for a career of predominant distinction, may go down in history acclaimed by all as in truth

"The land of the free and the home of the brave."

The Lawyer as a Business Man*

By H. ST. GEORGE TUCKER
Of the Virginia Bar

THE term "legal ethics," as I understand it, is the standard of action as applied to the practice of law by members of the legal profession. At the outset, we are met by the inquiry whether there is any separate or distinct standard of action in one department of life as distinguished from another? As the legal term "negligence" ramifies into every pathway of life, so the term "ethics" permeates all human action, and, while variant in application, in principle should be constant in every phase of human activity. The standard of action of a man and the motives which control him should be the same, in whatever relation of life he may be placed.

Legal ethics is not different from medical ethics, or social ethics, or commercial ethics. They all refer to the same standard of action in the different relations of life. The idea that there may be two standards of action for men—one for his professional or commercial life, and one for his private life, or political life—has found a lodgment in the minds of many people, and has been the

source of much injury to professional and political character; for it must be admitted, although reluctantly, that some men in business, in politics, and in their profession, regard the possession of two characters as proper, if not essential, to them. They essay to carry the one in one pocket and the other in the other pocket—a business character in the one; a personal character in the other—and, as occasion requires, they draw upon the one or the other as needed. The standard of one is higher than the other, and the use of the business or professional character in private affairs is indignantly scorned, and the standard which they set for their business or professional life is repudiated in their private life.

Waiving the question of the ethical propriety of this dual character, and the variance of professional and private standards in the same person, the objection to it seems to me to be fatal as a practical matter; for, in the hurly-burly of life, a man is apt to draw upon the wrong character and to find himself hopelessly involved in "the battle of the standards" between private, professional, and public rectitude. I invoke the principle of universality of one standard of

*An address delivered before the Albany Law School in the Hubbard Course on Legal Ethics.

right, though its application be as variant as the hues of the rainbow.

The language of Cicero, applied by Lord Mansfield to the law merchant, may justly be applied: "Non erit alia lex Romæ, alia Athenis, alia nunc, alia post hac, sed et apud omnes gentes, et omni tempore, una eademque lex obtinebit."

The idea that the practice of law involves a different application of ethical principles from the ordinary affairs of life has led to much confusion and is the source of much error, and I make the broad assertion that the standard of propriety in the practice of law as held generally by the leaders of our profession is as high and delicate as that held by any profession, business, or vocation, not excepting the ministry itself. Much of the criticism which has come to our profession is from a total misconception of the duties of the lawyer. He practices before a human judge, upholding human law, and the profession is often held accountable for the miscarriage of divine justice.

Law, in its generic sense, from the Latin "lex," refers to human law—that rule of action prescribed for the government and control of man. It must be distinguished from "jus," the absolute right, which has its synonym in the Greek "dike," justice. The one is human; the other divine. Human law is at last but the human concept of the divine law. It is the divine law filtrated through the conduit of humanity—the human reflex of divine right. The latter is absolute, unconditional, original, inflexible, divine; the former represents human effort to realize the divine right.

The failure to make this distinction often causes a popular outcry against the law, because some one has escaped its clutches whom it is thought should have received the severest condemnation.

How important, therefore, is it to remember what law the criminal is charged with breaking, the lawyer with defending, and the judge with upholding!

Municipal law defines with accuracy, in its proper jurisdiction, its conception of murder, and writes it on the statute book. The criminal is to be tried under that law, and no other. The question therefore is, not whether he is guilty either under the municipal law of another jurisdiction or of the divine law, but whether he has offended the law that has jurisdiction of his case. He is tried under the municipal law. The lawyer, the court, and the jury are criticised by the outsider, oftentimes, for not having sustained and defended the divine law. What man, for instance, brought to the bar of a civil court to answer for the crime of murder, could successfully plead that he has not "been angry with his brother without a cause" and yet that is the test of murder under the divine law.

And could any one claim that a lawyer was lacking in a proper regard for legal ethics who undertook to defend a man, under the municipal law of our states, who admitted that he had conceived in his heart his brother's murder, or had "nursed his wrath to keep it warm" against his brother, without committing any overt act, as required by the municipal law? Human law necessarily cannot be perfect, as humanity is imperfect, and unworthy men doubtlessly escape its punishment; but this may be necessary to save the innocent from injustice.

The first principle necessary for a successful and honorable career in the profession is the possession and *retention* of the simple, homely virtue of honesty. A recommendation came under my notice not very long ago of a young man who was said to be "very intelligent, alert,

active in business, and *tolerably honest*." The type of honesty I have in mind is not that which is above temptation when none exists, and which plumes itself upon its stalwart virtue on the tranquil seas of prosperity, but rather that sort which, amid the storms of life and the intense struggle for existence, sits undisturbed amidst it all, indifferent alike to temptation and the blandishments of exalted preferment.

"The honest heart that's free frae all
Intended fraud or guile,
However fortune kicks the ball,
Has aye some cause to smile."

No man ever became a confirmed thief in a day, as no man ever became a confirmed drunkard in a day; but the constant violation of the principles of common honesty in little things so weakens the moral sinews as to make resistance impossible when the great temptation comes. The profession to which we belong affords greater opportunities than any other for pillaging the public—the innocent public.

Pause for a moment to consider how close is the relation of lawyer and client! So close and sacred is that relation that no court will compel either to divulge the secrets imparted in their confidences. In order to successfully conduct the business of your client it is necessary—absolutely necessary—that he should give you, not only the various statements of his case, but the secrets of his inmost heart. These are yours to toy with, to play with, as you please. He is supposed not to be learned in the law as you are, and every advantage which the greater knowledge of your profession can give you for the advancement of your client may be turned by you, in an unguarded moment, into an engine of his destruction. He can withhold nothing from you. All information which he has is yours, and if that information

is used for your advancement, and not his, you are guilty of the foulest crime against humanity. Therefore, the law declares that you shall not buy your client's claim. Your business is to prosecute it, not to trade with it. You do not stand on equal footing. You have knowledge as to the legal status of that claim which he cannot have, and the law will not sanction dealings between you—and properly so.

Again, you may start into the profession honest in every fiber of your nature, with every emotion of your heart leading you into the paths of uprightness; but, if you would remain honest and avoid the danger of temptation, I urge upon you the adoption of one cardinal principle, and if I succeed in bringing to you nothing worthy of your consideration except this, and this principle shall become a part of your professional life from its beginning to its close, I shall feel amply repaid. It is this: *Never put a dollar of any man's money in bank to your own credit.* On this commandment hangs all the law and the prophets. Never put into bank to your individual credit a dollar of fiduciary funds. Let not the tempter persuade you that on to-morrow you will remit it. "To-morrow may never come." Let not the delusion that your plethoric bank account smiles at the addition of only a few hundred dollars belonging to another, when if that belonging to another were used the account itself would many times pay it; let not the appealing message from a distance calling you away, without the opportunity of going to bank, tempt you to the use of your client's funds in your pockets, though your every intention is to replace it on to-morrow.

If you would realize the satisfaction of a professional life well spent when you come to its close, I entreat you to

adopt this rule on the first day of your entrance to the profession, and in the language of Fitz James, declare: "Come one, come all, this rock shall fly from its firm base as soon as I." A failure of its observance has marked the progress of our noble profession with many victims who entered its portals with as noble purposes as you have to-night, yet slowly and stealthily a professional life, otherwise creditable and noble, has found its end in disaster and disgrace. Where client's funds are commingled with the lawyer's, he checks upon both, not knowing, as he claims, that he is checking out money which belongs to another. This is no excuse; he ought to know it.

It may be asked, how can you live up to the principle laid down, and how can you avoid having your client's funds in bank to your own credit before they are transmitted? The answer is plain: Have two bank accounts—one an individual account, in which every dollar belongs to you; the other your account as attorney, into which go all the funds of your clients, with your bank book showing the amount in each entry, to whom it is due, and the cause to which it is credited. Then, if death comes, the books speak for themselves. If you collect \$100 for a client, and your fee is \$10, put the \$100 in bank to your credit as attorney, and check to your individual account your fee of \$10. This you can do, for the \$10 is yours, not your client's.

A question at the present time, quite prominent in the public mind and the subject of much discussion, is that of the propriety of a lawyer, who is counsel for the great corporations of the country, advising them in the conduct of their business in such a way as to keep them within the law and not amenable to its prohibitions. The question is one of deep public interest, as it relates to the lawyer who advises the client and the

law which is involved. It is sometimes more bluntly put: "Should a lawyer advise a client how to evade the law?" The answer may be put as bluntly: "It is his duty always to advise his client how to avoid the law, and not to break it."

I find that abstract discussion is never so satisfactory as a concrete example in an effort at clearness. Suppose, for instance, a law exists against trusts—commonly understood to be an aggregation of corporations collected under one organization; and suppose a lawyer, representing one of these trusts, is called upon to give his advice as to how such an organization might operate for the accomplishment of similar ends under a different form and organization. It must be remembered at the outset that the lawyer's duty is to advise in reference to the law as made and as he finds it, and in such capacity, with no power to make or unmake law. The propriety of the law as made is for the legislator; its observance, as made, is the duty of the lawyer. If what his client desires is not to break the law, but advice by which he can accomplish the same object legally, in spite of the law, it seems to me that he clearly has the right so to advise, unless he is met by another principle which no lawyer can fail to observe.

The lawyer must not only be a defender of the law as it exists, but he must not forget that he is also a citizen of his state and of the United States, and as such citizen he must do nothing that will encourage dangerous policies or develop dangerous agencies in the republic. The client who wants his advice finds the law in his pathway; the lawyer, by his ingenuity, finds a way around it, and in so doing he does not violate the law. He only shows the weakness of the law in preventing what it may have intended to prevent. May

the lawyer do this? Yes; he may do it with true fidelity to his client, with a proper fidelity to the law which he has sworn to uphold, and to his own conscience, unless the method which he suggests to his client (which is itself legal) will, in his judgment, create an instrumentality hurtful to the state of which he is a citizen, or to the development of his country in the paths of freedom, liberty, and progress.

The duty which the lawyer owes his client is undoubtedly great. It is said by some that he must forget self and regard only his client. From that view I must dissent. I do not believe, under any proper system of ethics, that a lawyer can be held as surrendering, when he accepts a retainer, his personal notions of propriety or freedom of personal action. To do so would be to surrender the right of self-use and personal responsibility to the paramount right of another. In the illustration given, the client who desires to accomplish under one form what the law will not permit under another has no right to demand your services in accomplishing the desired object if you do not believe that the operation of trusts in this country is for the good of the country; while to the lawyer who holds that the trusts are advantageous to the country, no such objection can attach, and there are not a few who hold, and are prepared to demonstrate, that the capitalization of capital and the consolidation of administration under one organization is a most desirable thing for the country, commercially, economically, and socially.

While, therefore, I maintain that no man is justified, as a lawyer, in advising his client to evade the law that may be obstructing him, if the end to be accomplished, in his opinion, is against the public good, I feel that it is perfectly consistent in another lawyer to give the

advice which would accomplish the same ends for the client, if he believes the object a good one, because it must never be forgotten that such a lawyer is not advising his client to break the law. He is merely taking advantage of the weakness of the law to accomplish for his client what the law does not forbid and which he himself approves.

A principle which must be faithfully guarded in the practice of the law is that of never appearing in a case in which you may be embarrassed in the prosecution of your client's cause by your relationship to the adverse party by ties of blood or business or social life. Your client is entitled to your best efforts always. Can he have such if the ties of blood between you and the adverse party are close and tender? If your business relations with him have been such as to preclude you from an attack which your client's cause may demand? Or if socially you have been so related to him as to make it difficult, if not impossible, to show up your adversary in his true relations to the case. This principle rests upon that exclusive right which the client has to your whole service, and if for any reason this may be paralyzed or weakened by your relationship to the adverse party, it is only meet and proper for you to decline the retainer.

I once knew a young man who was a "briefless barrister," struggling for the necessities of life in his profession, who was called upon to defend two men for murder. They were charged with the murder of, and had killed, a gentleman and his wife who were his friends, and at whose house he had oftentimes enjoyed the kindest hospitality. A refreshing retainer of \$2,500 was the seductive temptation to the offer. He refused the retainer, because the case as developed by those who desired his services showed that it would be necessary to make an

attack upon the character of one of the parties killed. To my mind, he was right in so refusing, because, if he were a true friend, he would naturally doubt whether the attack on his friend was justifiable, or, at least, the feelings of friendship for the dead would minimize and lessen the vigor of the attack which his client's cause might demand for its successful defense.

A lawyer is often asked whether it is consistent with good morals for him to enter the "plea of the statute of limitations" in a case where he knows his client owes a debt and attempts to avoid it by the interposition of this plea. This question involves, in a measure, the same considerations which we have considered heretofore. The lawyer finds the law already made for him, with no power to change it to meet a special case, and, as an officer of the law, he is expected and required to live up to it and to enforce it. The lawmaker undoubtedly finds, as a primary principle of human nature, that man will surely demand what is his own in due season. If it is his, or if he has a right to it, he will certainly demand it, and that, too, in as short a period as possible. Some from motives of generosity, some because of ample means, or it may be from engrossment in other matters, may make their demands at different periods; and the lawmaker, with this principle of human nature before him, writes a law that if the demand is not made within a prescribed period, which period is supposed to cover the time in which such demands should naturally be made, that the interposition of the "plea of the statute of limitations" shall prevent the enforcement of the claim. That limitation becomes a part of the contract when entered into. This is known to debtor and creditor alike. The creditor, as a part of his contract, knows that he can only enforce it

within a fixed period; the debtor knows that he may be free from the liability unless it is enforced within that period.

And the limitation is fixed for another reason—that the contract out of which the demand springs can often be proven only by the living. If no limitation were put upon demands, the creditor might wait until the demise of all those who were cognizant of the contract, and then attempt to take advantage of the position of the supposed debtor by enforcing the contract which he is unable to disprove. This is strikingly illustrated in the requirements in many jurisdictions where executors are required by law to plead the statute of limitations in all cases in which their decedent's estates are involved, and the failure to do so makes the executor personally liable. The law in this case, therefore, is made with no idea that it will, or can, cover all cases that may arise; but, taking human nature as we find it, together with the motives that actuate debtor and creditor alike, the best solution of the rights of each is found in the limitation upon the right of demand by the one and the release from payment to the other.

That some debtor may unjustly avail himself of the law to rob his creditor, even with the knowledge of the lawyer who interposes the plea, may be true; but on what ground can the lawyer, whose duty it is to uphold the law, refuse to apply it for his client? This is but another instance of the inadequacy of the law to meet every demand upon it. Indeed, in the consideration of the "plea of the statute of limitations," and the duty of the lawyer to plead it for his client, it must not be forgotten that it is in effect as if it had been written in the original contract that "this contract can be enforced within the fixed period of the statute and not afterwards," and if that be the real effect of the statute, on

what ground can the creditor complain if the defendant avails himself of the contract as made? The statutory limit is, in effect, the year of jubilee for the debtor, when emancipation from his obligation comes under the law of the land, and with the consent of the creditor who entered into the contract with full knowledge of the law. The same view is maintained as to the pleas of infancy and usury.

Many lawyers in the practice before the courts, thinking to add strength to their cause, frequently express, with semidramatic power, their personal belief in the justice of their cause or the character of some witness. Such a habit is to be condemned. It is a misconception of the duty of a lawyer to suppose that any fact in his case can, or ought to, be bolstered up by the bulwark of his personal belief. Whether he believes his case just or not is a fact which the court has no right to take cognizance of, nor he to affirm. Its justice must rest upon other considerations—notably, the law and the evidence as applied to the law in his case. His duty is to present every phase of the law that can bear upon any point in his case. The judge is to determine its legality, and the jury is to determine its credibility. He must by diligence array the facts, collect the law, and apply the one to the other, without regard to his personal opinion, leaving the facts as stated and the law as indicated, as applying to them, to determine the justice of his cause. He usurps the province of the court if he seeks to throw his own opinion as to the justice of his cause into the case, and makes of himself a witness in the cause—a position he would be unwilling to assume if asked to go on the stand in person.

On the other hand, this practice is open to another objection—when once begun it is difficult to curtail, and the lawyer will find, in the continual draft upon his own opinion as to the justice of his cause in each succeeding case, that the court and jury will soon begin to realize that his opinions of innocence on the one hand, or of the justice of his client's cause on the other, are the hysterical ebullitions of misjudged advocacy; while his failure to assert either, in any case, whenever the practice is begun, will be accepted as a tacit admission of the injustice of his cause or the guilt of his client.

The relations of the counsel to each other in the practice of law is one of the most important to be considered under this subject. "Uberima fides" must be the true relationship of counsel to each other in the discharge of their duties. Sharp practice that puts your antagonist at a disadvantage is neither becoming nor commendable, according to the true spirit which should actuate members of the profession. If your fight cannot be won in the open, let it fail. But success, won at the expense of open and honorable conduct, is far worse than defeat.

The chivalry of the profession has ever been one of its chief glories. The crossing of lances in the open field should never be marred by a thrust below the belt. The entrance of those to the profession who would break down the esprit that has ever controlled its leaders is greatly to be deplored, and they must soon be relegated to a position of innocuous retirement, if we would preserve to the world our priceless asset of courtly and decorous demeanor amid the heated contests of the forum.

Letters from a Lawyer to His Son

By **ARTHUR M. HARRIS**

Of the Seattle Bar

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[A condensation and compilation of letters from a lawyer to his son who is about to enter upon the practice of the law. The salutations and matters of private interest are eliminated.]

Letter V

I DID not expect to receive very many letters from you at this critical period of your history, without finding in some of them an allusion to your future location.

I have known all along that you did not feel quite satisfied at the prospect of coming in with me. You feel that Wilmotville is a somewhat restricted field for your activities, and, I suppose, with the proverbial ardor of youth, you long for distant scenes—for “fresh fields and pastures new.” That is laudable. I think I diagnose your case correctly when I say that you feel the life of a lawyer in a small mid-Western town to be pretty humdrum; that it has nothing to offer you either in the way of money or political honors.

Well, I would not care to have you settle down with me, if you did not feel quite satisfied with the outlook. I think we would take in enough money for us both to eat on, anyway, and perhaps have a small margin for luxuries. If you were temperamentally fitted to work beside me and succeed to my business, as I have no doubt you would in due time, you would find that the life would hold for you many compensations and attractions. This will be especially true when

you are a little older, when a few of the rose dreams have vanished, when you have become a little more portly around the girth, and have ceased to fly up the steps of the courthouse in two vigorous leaps.

Frankly, I would not exchange my particular lot in this life with any man. I have my own well-ordered office and my own well-ordered business. Such an office to me is a haven of rest; not the rest of slothfulness, but the quiet peace of the regular day with its regular duties. There is a charm more subtle than I can express to you even in the inanimate furnishings of the office; in the neat rows of well-selected law books, with the uniform buff and red bindings on the outside of them and a measure of truth on the inside; in the well-worn desk at which your grandfather fifty years ago wrote his memorable speech in defense of Plinlimmon, unjustly accused of the murder of Mrs. Simmons; in the chairs polished with the arms of generations of clients as they recounted a hundred stories of wrong and injustice; even in the carpet, long faded into a grey and tasselled dotage, trodden by men who have achieved undying fame in a score of different lines of effort.

In my position a man becomes in

course of time a little court of justice in himself. Many and many a dispute have I settled without the trouble or expense of going to court. Most of the old settlers, as you know, refer their disputes to me, and my opinion is accepted by them as unquestioningly as if it were a mandate of the Supreme Court of the United States. This is well, and as it should be. The true lawyer is a pacifier, not a provoker. His efforts are more than commercial, higher and nobler than merely mercenary. On his integrity and good sense depend the well-being, not only of individuals in their petty differences, but also of the community as a whole, which prospers when time is saved by a peaceable settlement of disputes, and money goes into the land, instead of into the county treasury for costs, or into the pockets of ravenous lawyers for fees.

So I find in this life, my boy, a higher satisfaction than that which comes from feverishly watching a bank roll grow. My pleasures are simple, and the sight of a widow coming into my office in tears, and departing with smiles and renewed hope, warms my heart in a way that the tender of a seat on the Supreme Bench could hardly accomplish.

I never aspired to preside over a law corporation, with half a dozen stenographers, a dozen clerks, and four or five partners. I don't really feel quite comfortable on entering one of those ornate city offices, where a pert youngster demands your business, and then informs you that you may see one of the partners in anywhere from four hours to fourteen years. I suppose they are making money; but I am sure such men would be as depressed at the sudden cessation of litigation as the high-priced ear-and-nose specialist would be if every one should be created with healthy ears

and noses. If I felt like making a barrel of money, I assure you that the law business would be the last means I would choose for that purpose.

One of the big Chicago law corporations got after a poor woman down in my jurisdiction a few years ago. The property involved, a small farm—with all their brass plates and fixings, some of these fellows are glad to get very small fish in their nets—was situated in this county, and the case was tried here. I defended. The question involved a matter of tax titles, and I knew that my opponents were depending on technicalities and their awe-inspiring reputation to dislodge the woman.

Automobiles were coming into use then pretty generally, and one fine day one of those pretty toys, all red paint and gloss, wheezed and popped and crackled to a standstill under my office window, and presently a pompous, rather florid-complexioned man of about my age entered the office, breathing rather heavily from the effort of climbing the stairs. Between two fat, bejewelled fingers he held a thick smug-looking cigar, with one of those eye-destroying bands around it. He offered me the mate of that cigar, and being something of a smoker myself, and always ready to accept any expression of the good will of my fellow men, I took it; and after supper that night I enjoyed it mightily, as I reflected between the puffs on the events of the day.

My visitor eyed my little office with a great air of complacency, and decided that the whole effect was "very quaint—very quaint, indeed." In fact, I suppose he considered it an interesting survival of the "old school," whatever that was. He explained that he would have sent one of the boys down to try the little case (by that I suppose he meant one

of the overpaid clerks in his office), but he thought it was an excellent opportunity to run out to the country in his "machine" and make a little holiday. The rustic courthouse amused this lawyer very much, and, when he saw old Job Wilks totter in with the records, he asked me in an audible voice whether the old man "served in the War of the Rebellion or was one of George Washington's aides-de-camp."

Of course, I won my case. The surprising thing to me, however, was the unutterably poor argument this ornate gentleman advanced to the court. His reasoning was weak, illogical, and almost childish. I soon decided that he was a lawyer only by license; that he was one of those fellows, known as "good business getters," who turn the cases over to what they call their "office lawyers," and that it probably would have been better for his dignity, as well as for the interests of his client, if he had sent one of the "boys" instead of trying to make a little holiday by coming himself.

Letter VI

I MUST admit that you are right when you say that much of my former letter—in re the matter of location—must be stricken as irrelevant, immaterial, and incompetent. I did start out with the intention of seriously discussing the best whereabouts for you to settle and hang out the shingle of a lawyer and a gentleman, but sentiment treasonably waylaid me, and I was betrayed into a eulogy of the "old armchair." I rather pride myself on my pleadings, but, when settled down to write a letter, one thing leads to another, and before I finish I find that I have had a delightful ramble, but have reached no particular destination.

I suppose that, with the theses all finished and submitted, and the burning question of the best one duly settled to the satisfaction of only one person, namely, yourself, and with nothing much to do before the eventful day when you shall march two and two to the Auditorium to receive the parchment and ribbons, the chief topic of discussion is, Where next? For some of the fellows, the matter is settled by circumstances. Some of the boys will be absolutely broke, and will be compelled to take some job to get car fare, if they want to get out of town. With some of them the job they take temporarily will perhaps prove a permanency. They will never be able to see their way clear to break into the law business, especially if they wait very long to see what success comes to their bolder and hardier comrades who have taken the chilling plunge.

Outside of doing it yourself, there is no more discouraging thing than to watch the struggles of a young lawyer for the first few years after his admission. One feels that, if he were a rich man, he would leave some kind of a fund to help those chaps along, although at the same time he feels that that would be about the worst possible thing that could happen to young lawyers. Lots of the boys enter their own first little law office as pink-cheeked youngsters, and come out of it a few years later—to move, let us say, to better quarters—sober-looking men, with a few lines that only that particular experience could engrave on their faces. So the man who takes a job and waits for a stake often wakes up a little late to find that he is an honored and respected bookkeeper, but not a lawyer.

Over his after-supper cigar one evening, Judge Finlayson told me that when he was admitted to the Bar back in Con-

necticut he was absolutely without a cent in his pocket, and no collateral that would realize five cents at the Sign of the Three Gold Balls. In those days what is now the Middle West was considered pretty far West, and the future judge's mind was full of Horace Greeley's memorable and oft-quoted advice. He wanted to go West, and the wish with the Judge in those days, as it is now, was but the sweetheart to the performance; for they always married. He was wandering back from the courthouse where the examinations had been held, and chanced to run across a couple of the men who had taken the exam with him, and who felt so sure they had passed—as, indeed, they had—that one of them, having a little more cash than the others, generously volunteered to buy an oyster dinner for the trio. While discussing the meal, and also the questions that had been asked, as is the way with all men who have passed through an examination together, a beggar entered the restaurant and laid a card on their table, conveying the information that the man was deaf and dumb, and asking that, as he could not speak for himself, they would permit the card to speak for him and appeal to their charity. Now, if the Judge had not been feeling pretty mellow, he would never have told me of this incident; for, while it showed some enterprise, it was not a strictly honorable thing to do.

Going into a hotel, the Judge helped himself to the hotel stationery, tore off the printed letter head, and very laboriously printed himself a notice, something after the style he had seen on the deaf and dumb man's card. As a deaf and dumb man he traveled with wonderful success from Connecticut to Illinois, where he settled and made later the remarkable reputation which he de-

served. His first political office was justice of the peace, and he assured me, with a twinkle in his eye, that for quite a while the leniency with which he treated traveling mendicants of all kinds was matter of comment—mostly unfavorable—in all the country around.

Now, whether you go to a big city or a small town, you will at least have car fare. Fortunately the means is not the question with you, but the location.

If I have heard it once, I have heard it a hundred times, to wit: That if the young lawyer goes to a big city and waits long enough he will have a larger and consequently more lucrative practice than if he had made his first venture in a small town. Statistics do not support this theory. I am no lover of figures, and I can't quote any if I would; for I have forgotten just exactly how it is figured out. But I do know that, taking the average—the average, mind you—of city lawyers' incomes, they will not exceed the income of the average country lawyer. The advocate of the small town says that his man will make money from the start—that in the small town the young lawyer will have no waiting period. From my own experience I know this is wrong. Whether the lawyer goes to a big or a small town, he will have to wait awhile; but, of course, by being more quickly acquainted in a small town, he will not have to wait quite so long as his brother in the city. He may not have to wait at all after he is acquainted in a small town, for he may be one of the men who do not improve on acquaintance; and I have known more than one such lawyer leave the small town under rather ignominious circumstances. For the man who does not stand close acquaintanceship, I unhesitatingly prescribe the big city, where he can hide himself and pass his time un-

obtrusively between the police court and the barrel house.

The matter of a location is one that a man must decide according to his temperament. Some men are not happy unless they have a thousand miles of arc lights on each hand. What was it that old Dr. Johnson said about the smell of a flambeau in Fleet Street being sweeter to him than the finest aroma of new-mown hay on the country-side? Such men reflect with perfect horror on the seeming meanness of the "jay town," with its three or four blocks of straggling wooden sidewalks, its Beehive Dry Goods Store, the Swede Church, and the Patsy saloon, and the talkative livery man, without whom no small community is complete.

Letter VII

THE point about locating in a small town to start with is this: Emerson, among the very many fine thoughts which he expounded, has one to the effect that, if a man is truly competent in his particular sphere of work, the world, always anxious to obtain the best, will beat a pathway to his door. When once it becomes known that a man is truly able, he will not have to go to the largest market and hawk his wares from door to door. The buyer will come to him. The finest apples in the world are grown in the great Wenatchee Valley, in the state of Washington, and buyers from all the big world-centers come there to purchase the luscious crop. The Wenatchee man does not have to send out a long string of salesmen. He has simply to plant, water, and attend his orchards, and the world watches and waits for the apples to ripen. The Passion Play in Oberammergau is something peculiar to a certain locality. It stays in the small village where it originated, and men are

glad to come from all parts of the earth to witness it, and glad to pay all kinds of money to get there. So far from its being advisable for rustic actors to take their play "on the road," to stage it anywhere but at home would be to eventually weaken and ruin the play.

Two of the very best surgeons in the United States are content to remain in a small town in the Middle West. Their reputation has gone out from there, and patients come from the four quarters of the globe to obtain their services. They do not care to open elaborate offices in New York, with pages, clerks, and assistants. Their worth, their ability, provides them with all they can reasonably attend to, and as profitably, if not more profitably, than if they followed the ornate office plan some of their less skilled but more unscrupulous brethren resort to.

The world is, after all, not so very large. News travels very quickly. If a Blackstone, or a Marshall, or an Austin should live in a shack in the heart of the Rocky Mountains, his reputation would inevitably trickle out. The word would go forth that he is a man who knows the law, and knows it better than any other man; and presently the big corporations, in search of the best, would have their scouts out sniffing around those mountains for an interview. Compared to the rest of the world, Palestine is only a smear of a few rocky acres of ground, yet, because of the worth and the truth of One who lived there some centuries ago, unnumbered millions of men have been put in close and intimate relations with their Creator.

I would suggest that you get into some town of about fifty thousand people, in a growing and enterprising part of the country. You will have many of the pleasures which a man in a cow-town could not get. You will have the oppor-

tunity of getting a variety of law experience that you could not obtain in the too small community, and, best of all, you will not be smothered with the competition that makes practice in a big city almost an impossibility. It has ceased to be a picturesque thing to starve to death in your office. This country needs all its men too badly to permit them to emulate the example of the young barrister Dickens tells about, who was missed from his circle all at once, and some months later was found in the closet of his chambers, a skeleton.

In the blush of young enthusiasm I spent two dreary years in Chicago trying to get a foothold. The city was not then as big and bustling as it is now, yet it seems to me that they had just as many lawyers, comparatively speaking, then as now. Now, I did not give up the struggle of my own free will and accord. I just naturally came to a place where it was a case of going to work or going without meat, and I decided that, rather than abandon my profession, if I could not practice it in Chicago, I would go to some place where I could. A true lawyer has something of the artist spirit. He must practice law or rust to death. If he is starved out in New York, you will find him sitting on an iceberg in Nome, blowing on his fingers to keep them warm, and conning the statutes of the district.

Well, I found in Chicago that many young men who were maintaining offices, and to all appearances were practicing law, had some other kind of refuge. Numbers of them were working night shifts in the post office. Some others found their way into the county offices, where night clerks are employed. In this way they were able to struggle along. This method of practicing law is more heroic than pleasant, and if per-

sisted in is well calculated to age a man some years before his time.

What I like about the small-town practice is that a man is within walking distance of his home. You do not have to sit and fret and worry in your small, top-story office all day, and at night jam into some overcrowded street car for a nine-mile ride to your home. Nothing like that. In the country you can walk home for your dinner and supper. You will have better things to eat, and more of them. You will find a place to board with some motherly woman, who will feel worried if you do not eat everything in sight on the table. You will make many pleasant acquaintances. You will feel fresh and strong for study and work. The agent for the big corporation may never find you out; but then that will be to your advantage, after all. Not that I believe that the corporations are looking for dishonest men, or for men who can teach them how to evade the law. The people must make bogeys of something. A hundred years ago in England it was Napoleon, and in present-day America it is the trusts. Most big industrial concerns are good people to do business with. If you work for them, you are sure of your pay on Saturday night. If you buy of them, you know pretty well that you are getting your money's worth. The men who want big lawyers to help them break the laws usually have meteoric, but brief, careers. Our Federal prisons testify to the quality of the legal advice such men must have obtained.

For \$15,000 or \$20,000 a year any corporation can get a good lawyer to do everything that is necessary to protect its interests. The \$15,000 man has under him a staff of lawyers who are drawing not more than some of the men in the engineering department. If you can't go

to work for a corporation as a \$15,000 man, I don't want you to go to work for them at all. Twenty years with a corporation spoils a man and his chances of ever practicing. I know no more pitiable sight than the man who has scratched along on somebody's pay roll for a dozen or more years, and then tries to branch out in his own practice. I have seen too many shipwrecks made of this sort of thing. Get you into a location and stay—stay—stay. Work for yourself. Don't waste your time and energy playing another man's game. Then, when the almond tree begins to blossom, you will have something to sustain and occupy you.

Letter VIII

YOUR feeling toward the big city is a natural one. A young man feels that he has powers within him which must inevitably carry him to the highest places. Youth is unconscious of limitations. It is the sign of a good and hardy spirit in the young lawyer to feel that, let circumstances be what they may, his strong hand shall cleave a pathway through all obstacles until he grasp the tangible rewards of victory. The athlete is not content to watch the progress of a hard-fought game. His muscles tingle for the conflict. He itches to plunge into the thick of the struggle, scatter his opponents like chaff, and score a glorious touchdown. I know how you feel, my boy, in regard to "immuring yourself," as you call it, in a small town. You feel to a certain extent that you are "out of the game"—that the real fight is in the big center, and that there the real fighter should be.

You are right again when you say that one fee in the big town equals twenty in the small. The only thing is that your country brother is making his forty small

fees while your big one is just appearing as a nebulous and impalpable shadow on the horizon, contingent upon the outcome of some case, which, with an overcrowded calendar, the court will not be able to reach for six months. If you are in a densely populated district, the crowded condition of the courts will make it impossible for you to get results, even if you start filing complaints the very first day you open your office; that is, you cannot get your money out of the cases for months.

I will not say that money will flow to the man who opens in a small town just as soon as he gets there. Some men are doomed to starve to death in a community of three hundred souls, as well as in a community of three million. In the law, as in every other line of human endeavor, so much depends upon the man. The man refuses to be measured by a yardstick. He may confirm your fears, or he may set all rules and precedents at defiance, do the unexpected thing every time, and achieve a splendid success.

This, of course, is all obiter dicta. If I were compelled to render a decision proper upon the matter of location, I would say: If you have no capital, nor any employment you can follow that will run your law office (some kind of night work, I mean)—if you want to depend upon the practice of law for a living, your wisest course is to content yourself with the day of small things and be a backwoods lawyer.

If you make up your mind you want to go to Chicago, I think that I may be able to obtain you a clerkship in Judge Flory's office. You may have to hang around the Judge's office for two or three months, finding out where he keeps his legal blanks, and giving him a chance to size you up. If he likes you, I have

no doubt that the Judge would pay you some small salary—twenty-five dollars a month, or something like that. Under the pretense of giving young lawyers experience, many firms are obtaining splendid service for practically nothing. Frankly, it makes me a little impatient to see a good, honest, capable young fellow, sweating blood and living on cheese and crackers, because he thinks by doing that he is getting good "office experience." Now, in the economic scale, the work of a young lawyer is worth so much. It may not be worth a very great deal, but it is always worth more than the miserable pittance which an employing lawyer wants to pay. If the pay in these cases were commensurate with the work performed, a boy could afford to follow that system for a year or two: First, because it will enable him to get a few dollars together to take him to the country, where he will eventually go; second, because he has a chance to learn practical procedure at somebody else's expense rather than his own.

Dean Maple has a faculty of saying the right thing in the right way. Last spring, when I came up to see you, I happened to drop into the Dean's office for a friendly chat on old times and old friends. It was a week or so before Commencement, and a senior strolled into the Dean's office, and from the way he talked I judged he had been doing some heavy thinking on ways and means for the future.

The Dean looked up at him from beneath his shaggy brown eyebrows, and in that brisk, sharp way of his said, "Well, Shankland, what next?" Shankland shifted from one foot to another, and rather weakly volunteered the information that he was going out to look for a job.

"What kind of a job?" inquired the Dean.

"Oh, I guess a job in some law office," said Shankland.

The Dean laid down his pen and, looking Shankland squarely in the eye, asked: "And what are you going to get a job in a law office for?"

"Well," replied the boy, "I guess to get onto the ropes."

"Get onto the ropes!" the Dean snapped. "Get onto the ropes! Some pretty poor ropes you'll get onto. Go out and make your own ropes."

When the boy had gone I ventured to applaud the Dean's advice. He looked at me with a knowing twinkle in his eye.

"I cannot see," he said, "why all these young fellows want to rush into somebody's law office. There are some lawyers of thirty years' practice in whose offices I would be afraid to spend a week, for fear I would pick up their little legal vices, as well as what virtues they may have. This is very poor business, getting onto somebody else's ropes. I believe that, after three years of the drilling a man gets here, he ought to be able to go and work out his own salvation."

In all the world, there is no experience just like the kind a man gets in his own law office. The law clerk prepares a complaint, knowing that his employer is going over it afterwards, and anything that is wrong will be caught and corrected. The boy who is out for himself, and knows that when he gets his case settled he will get a fee, and if he loses he will get nothing, soon learns to be very careful about his pleadings. He is not going to give the enemy any chance to run into court and move for judgment on the pleadings. A cause of action looks to him more like a real, live human proposition than it can to the man who is merely framing up the tale of woe for somebody else. Experience! I tell you, my boy, that when you have

garnisheed the salary of some real, live workingman—say a blacksmith, weighing two hundred and fifty pounds, all bone and muscle—and he comes rushing into your office, frothing at the mouth, and perhaps fortified with a shot of bad whisky, and wants to toss you and the desk and the library all out of the window at once, you will think there is something in the law business besides wearing good clothes and attending law lunches.

Letter IX

SOME of your ideas on the subject of the lawyer in politics are good. You say that, even if a man should run for an office and be defeated, he will have had the advantage of a lot of advertising. That statement should be qualified a little. I have known a great many men to run for office who did not get a cent's worth of law business as a result. More than that, I have known men to hold office for a number of years, and on their return to private life be compelled to laboriously build up a practice again.

In the average community the law business flows into certain hands, and, if pretty well taken care of, is not likely to change, except for very good reasons. Tom Jones may never run for office. He may be content to remain in the little old town and look after the family troubles of his neighbors. He becomes known to them as a lawyer. He knows all their affairs. They trust him. Bill Brown, of the same town, may be elected to Congress for a number of terms. He may go to Congress a young man and return home a middle-aged one. He has been compelled to live up to all he earned at the capital.

When finally out of office, he turns his face towards home with the pleasant feeling that the natives are just waiting

for him to come back and take up their troubles again. What he really finds is that the Jones type of lawyer has got most of the business corralled. Just because Brown has been in Congress does not look like a good enough reason for old Farmer Akers to quit old Tom, who has been giving him good service and has always been found reliable. Brown, of course, will probably get new business; but it is a matter of starting all over again.

In all parts of the country, in the big cities, as well as in the rural communities, men will be found who have held greater public offices than Bill Brown's, who nevertheless are barely making a living from the scattered threads of a long-neglected practice.

We must give the lay public credit for a little more intelligence than it is usually supposed to have. Just because you run for justice of the peace and get licked is no reason why clients should come tearing into your office for legal advice. You say it gets you before the public—it gets you known. The public's memory is very short for politicians.

All a man has to do who wants to get a divorce is to stand in the intersection of two main streets in the heart of the city, and he will see the names of fifty lawyers on as many office windows, some of whom will handle his case for five dollars, and others who will want five hundred. Even if our supposed client were aware that an election for justice of the peace had been held, it is extremely unlikely that he is keeping a copy of the newspaper in his pocket in order to find a lawyer's name when he wants it.

If you go into politics, go with the intention of landing the job you are after. Anyway, don't try to tell your printer to wait until you get your business from the campaign for his pay for the adver-

tising matter you use. I don't know if it is advisable for the young lawyer to meddle in politics; but I know that it is in vain to try and dissuade him. Like children and the measles, almost every young lawyer has to have his attack of politics.

The lawyer-politician does not attract the best clientele. For some reason or other, we all have a certain suspicion of politicians. Men of business affairs regard them as particularly obnoxious; nor will they bring their law business to a man who wears the hated brand. There are exceptions to this, too. Very big business makes its own politicians. They take their lawyers and train them, and place them in the highest positions in the land. I assume that you are not looking for that kind of a political career.

In moderation, perhaps, politics can do you no harm. If you should succeed in becoming Prosecuting Attorney for Carney County, and should discharge the duties of that office creditably, it would be good training for you, both in a legal and political way. It would get you favorably known to the people of the county; but private practice, ably managed, will do that just as effectively, and with the advantage that you will not have made any partisan enemies.

The successful politician bears the best wishes of a large number of citizens for his eternal downfall. I understand, from a great many persons who have occupied influential political positions, that the happiest days of their lives were when they left public service to return to private life.

After all, the politician, like the poet, is born and not made. Such men really deserve the name of statesmen, rather than politicians. Burke, Pitt, Webster, Clay, Lincoln, were all created to bear the burdens of state. Their proper place

was in the center of high debate and great national achievement. I do not flatter myself that we have a Webster in the family. If it should turn out that we have, then I shall be very proud and happy to speed you on your heavenward course.

Nothing so coarsens a man as politics. There is something about the unholy swelter that takes the fine edge off a man's sensibilities. I will have to leave it to psychologists to inform us just what has been lost; I do know that the office holder is never quite the same man, never quite so good a man, as before his election.

This is a letter of qualified statements. I must qualify my strictures on the effect of political success upon a man's temperament. I have known mediocre lawyers elected to the bench, who seem to grow in mental stature from the very day that they took office. I took the bar examination with a young fellow named Wilson. He was a pleasant, agreeable chap, but not what would be called an extremely learned lawyer. That examination was extremely deep water for him, and from all his painful antics I concluded that he was about submerged. However, he managed to get through, and was delighted with all the delight of the man to whom the happy unexpected has happened.

Wilson had no illusions about ousting the President of the New York Bar Association from his chair in a couple of short weeks. Not he. There was only one place for Wilson. He was going West; and West he went. Somewhere amidst the broad, sweating stretches of gray sagebrush that roll from the Mississippi River to the Cascade Mountains, the intrepid Wilson tacked up the shingle of a lawyer and all-around adviser of men. I heard nothing of him for about

three years, when I got news that Wilson had been elected judge of one of the remote Western counties. He was then, I think, barely thirty years of age. Do you know, he made a fine record! From there, he walked to the Supreme Bench of his state, and I have had the pleasure of reading some of his opinions, which were not only models of pure English, but extremely erudite and logical.

Letter X

WHEN you have been in the legal arena as long as I have, you will realize that the most critical part of the lawyer's life is in the first three years of his practice. If you can properly survive that initiatory period, your success is assured. I know that those three years will be financially critical. You will often be hard pressed for money. You will know what an elastic thing one good meal can be, and how you can train yourself to travel on it for almost an indefinite number of hours—something like the camel and its famous conservation of drinking water.

I do not regard the financial question as the most critical part, however. That sort of thing is not peculiar to the law business. As to missing a meal once in a while, that won't hurt you at all. Men have lived for two weeks on the sole of a rubber shoe, and have lived to tell what a delicate diet that may be under some circumstances. The most important question for the young lawyer is how to properly utilize the time. A young fellow rents himself an office and settles down to wait for clients. How is he employing himself during that time of waiting?

I know some fellows who read everything but law. The first hour of the morning is spent in diligent perusal of

the newspaper. On their desks you will find all kinds of magazines and periodicals. Seldom will you find among that pile of *débris* a professional journal. These men will have an amazing fund of general information, yet the chances are ten to one, speaking after the manner of gambling men, that they will not know enough to join the wife in an action involving community property. They will make that mistake only once. A sinister Nemesis will find them out and expose them, when the property in litigation comes to be passed to the hands of a third person.

It is a horrible sensation to have to explain to an indignant client just how that error occurred. Don't think that you can bewilder the litigant. He will ask you some pretty pointed questions, and will not be satisfied, commonplace creature that he is, with a quotation from Epictetus in the original, or a stanza from the "Lay of the Last Minstrel." When he is gone, and you mop the sweat from your fevered brow, that old Code that you neglected will seem to reprove you audibly for your indolence and carelessness.

The man who can find pleasure in continual reading, if it is only the light, frothy stuff that goes under the designation of "light literature," is a little better off than the man who does not care for general reading, and who cannot bring himself to read law. That sort of individual is in a most unhappy way. Hour after hour you may find him, sitting with his feet on the desk, stolidly smoking his pipe and dreaming. A few months of that bitter do-nothing way of living will demoralize any one. Then it is that the young lawyer loses his head. If business will not come to him, he will go to the business. He turns over in his mind a thousand ways for making mon-

ey. A collection agency, finally, looks like the best avenue of escape.

Sinking his scruples, he grabs his hat and starts on a canvass of the merchants, doctors, and dentists, for their bad bills. The first place he enters, say, is the office of some young doctor. This young man is about in the same boat with the desperate young lawyer. As his visitor enters, the doctor looks up from an open book of anatomy or medicine, or carefully lays down some delicate surgical instrument he has been cleaning, and listens to the request of the lawyer for the bad bills. He has no bad bills; in fact, he says with a smile, that he has no bills at all, good or bad, but if Mr. Brown will leave his card he will call him up the first time he has anything to collect. The doctor is pleasant and courteous, but the lawyer sees a peculiar look in the doctor's eye, a look of surprised disapproval, as though this was hardly the proper course of conduct for a member of a learned and respected profession to pursue.

Outside in the hall Mr. Brown takes a second thought about the collection proposition. It does not look quite so good to him as at first. However, he determines not to be defeated by a look, and enters the next office, one occupied by an old gray-headed doctor. No, thank you; he never gives his bills to collectors. Yes, he has lost thousands of dollars in bad bills; but he knows that if his people can pay, they will do so. Furthermore, he has not a very exalted idea of doctors who give their bills to collectors.

Now, that strikes young Brown as rather a new thing in professional ethics. What a quaint idea that—not even to give a bill to a collector! What a gulf between that attitude and the attitude of a man who, because he is a lawyer, goes

out and begs for a chance to hound a debtor down! Brown goes back to his pipe and his office, and later, when the pressure becomes too strong, goes out and gets some kind of a job, hoping to make a small stake and start properly.

The point is that, if you do not occupy your mind while sitting alone in your office, you are going to lose your head. You are going to entertain a thousand wildcat schemes for making that meal ticket. There is only one remedy, and that is in the diligent and systematic study of your books. If you have spent the day conning your texts and your cases, you will go home at night feeling that you have done a day's work, even if you have not taken in a cent of money. Steady law reading is an excellent corrective for all sorts of bad mental habits.

Again, you should spend as much time as you can in the courts, listening to the trials. The courtroom is where you can do your laboratory work, where you can see the practical application of the principles you have gleaned from the books. A great Italian singer once confessed that he had spent only a few months under a master. When asked how he had then acquired his rare knowledge of technique, he said simply, "By listening." Blackstone tells us that he had but few cases in his younger years, but that he was a diligent attendant on the courts, making notes and recording decisions.

Study and listen, my boy, and when the emergency arises, as it is bound to do, you will be master of the situation. The proper investment of your time will yield a rich interest. Every man respects the student, and the reputation for being constantly at his books or in the courts is an asset which will insure any lawyer quite a continuous rotation of meal tickets.

A Case-Book Suggestion

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THAT there is much to be said in favor of the case-book method of teaching law is unquestionable. That the prevalent application of that method in the schools where the case-book is used exclusively, and other text-books are practically eliminated, is, under all conditions, ideal, seems not equally beyond a reasonable doubt. On the contrary, it would seem unreasonable to conclude that methods which are applicable at the larger law schools, whose scope is practically national, are necessarily the most ideal for application in schools whose students are drawn almost entirely from a particular state, or from a locality of states, and who are preparing to engage in the practice of law within a somewhat restricted territory.

It seems very probable that the ordinary case-book now in use is admirably adapted to the needs of schools whose course must needs be extensive and comprehensive enough to cover the laws and practice of practically the whole country. So what is intended by this article is by no means a criticism of case-books generally, as they are now used in the larger universities, but merely a suggestion as to something which may be adapted somewhat better to the needs of schools of a more purely local character and without attempting to suggest that the idea might be adaptable to any wider or more general application.

In the May-June (1908) number of the American Law School Review there

appeared an article by Professor Henry W. Ballantine, of the University of California (now Dean of the Law School of the University of Montana), entitled: "Adapting the Case-Book to the Needs of Professional Training." Among the adverse comments upon the modern case-book as employed in the larger law schools, as well as many lesser schools, the able writer above referred to adverted somewhat in detail to the lack of practical training in the use of the authorities at first hand afforded by the schools which have carried the use of case-books to the extreme. This defect, to which Professor Ballantine has referred and for which some remedies were suggested and discussed, has suggested to the author a somewhat more radical solution to the problem, which seems practicable, at least with certain limitations, and which may, perhaps, prove of interest.

Certainly one of the most glaring defects in the equipment of the average law school graduate as he leaves the classic halls of his Alma Mater is that he is utterly inexperienced in applying the law to any given statement of facts. During his law course, this has practically all been done for him, either by the compiler of his case-book, by the author of his text-book, or by his instructor; the situation in this regard, ordinarily, being about the same, whether the method of instruction employed has been the case-book method or one involving more or less the use of texts. But the case-

book method renders such a result inevitable, inasmuch as, every point being covered by a multiplicity of cases, in order to cover any given subject within the time allotted to it in the ordinary law course, little opportunity could be given the student to become familiar with the authorities as reported, in the way they must be met in actual practice.

The average member of a law class is or should be a person of a fairly mature mind, somewhat above the average maturity of mind of college undergraduates. If this latter statement be not literally true, he ought at least to be by so far the better material for the instructor that he is shaping his education toward the attainment of a definite end. For this reason it seems reasonable to believe that less rather than more detail is requisite in instructing a body of law students than is the case with college undergraduates, and that more rather than less might reasonably be intrusted to them by way of original research, with a minimum likelihood of the abuse of such a freedom from the restraint of absolutely beaten paths.

All of which leads up to the result of my observation, which is that the modern case-book, because of the voluminous nature of its contents, the vast number of similar cases cited and presented, the great detail with which every point is developed, leaves too little to be worked out by the student along lines which will confront him in his first case, and every succeeding case, in actual practice. It is doubtless impossible, under the best possible conditions, to make full-fledged lawyers in any law school; but it seems that every means which might tend toward that end should be carefully looked into.

The suggestion tending in that direction is briefly this: Let the case-book

(intended to be supplemented by standard text-books) be in the form of a note-book, with blank pages between the statements of the problem cases. On the first page let the problem case be stated as briefly and concisely as consistent with a complete and comprehensive statement of the operative or ultimate facts. The case should be a supposititious one, so that the student may not, perchance, find it reported somewhere, and thus lose the benefit of working out its solution for himself. After the statement of the case, such space as may be deemed necessary would be left blank, upon which the student will write the decision, stating the point of law involved and the reasons and citations of authorities. This, however, he will not write in until he has read and abstracted such cases as the instructor may choose from the authorities cited. Following the blank page or pages, left for the student to use in writing his decision, will be given a comprehensive collection of the authorities, followed by blank pages upon which the student will write abstracts of the cases assigned by the instructor from those cited, as many as the instructor may deem necessary to cover the point involved, and which are to be read and abstracted before writing the opinion in the problem case, and which are to form his basis therefor.

In order to make the suggestion more graphic, the following specimen case is submitted, which involves the matter of express warranty, and which is not given here as a model of its kind, nor as suitable for use in a case-book such as here suggested, but merely as an illustration of the idea intended to be conveyed:

"A., a railroad contractor, goes to B., a dealer in mules, and asks him if he has any mules suitable for his work of railroad grading. B. replies that he has. A. asks him if they are well-broken and good draught ani-

mals, and B. says that they are. Thereupon A. buys certain mules and pays for them. The mules prove balky and entirely worthless for the purpose for which A. bought them. What is A.'s remedy? What difference would it make if B. knew of the defects? What would be A.'s measure of damages, if he is entitled to any?"

(Blank space, of such extent as deemed necessary to the particular case, for statement of the principle of law involved, and the decision on the point, with reasoning and statement of authorities.)

(Thereafter the authorities, of which one or more will be designated by the instructor to be read by the student and abstracted on the following blank pages, preparatory to writing the decision in the problem case above.)

Authorities for above:

38 N. J. Law (9 Vroom) 496, 20 Am. Rep. 425.

58 Ky. 444, 71 Am. Dec. 489.

43 Me. 226, 69 Am. Dec. 56.

60 Vt. 401, 15 Atl. 100, 6 Am. St. Rep. 122.

18 Wis. 196, 86 Am. Dec. 757.

9 Mont. 191, 23 Pac. 74, 7 L. R. A. 471, 18 Am. St. Rep. 731.

45 Cal. 473.

80 Ga. 150, 4 S. E. 877.

86 Iowa, 543, 53 N. W. 342.

89 Iowa, 513, 56 N. W. 652.

118 N. Y. 260, 23 N. E. 372, 16 Am. St. Rep. 753.

145 N. Y. 414, 40 N. E. 228.

13 Wis. 600.

41 Wis. 360.

78 N. C. 323.

6 Daly (N. Y.) 376.

57 N. Y. 16.

3 Ky. Law Rep. 526.

114 Mo. 38, 88 S. W. 1126.

127 Iowa, 696, 164 N. W. 286.

52 Neb. 617, 72 N. W. 1058.

It would seem advisable that the student should write abstracts of three or four of the leading cases on the average problem case, and the citations should refer to a number of the leading reporter systems, if possible, so that the average law school library would furnish facilities sufficient to enable a number of students to work at the same time. The instructor could easily supplement the list of cases cited in almost any instance by referring to cases reported in the state reports of the jurisdiction in which the school is located, or by referring to any

other authorities to which the student might have access; but the main point is that the student would in any event be getting his experience in going to the reports directly, in separating the wheat from the chaff by his own efforts, instead of reading the pertinent portion of the report which some one else had carefully dissected for him.

A summary of the advantages of such a presentation of a point of law would seem in part to be: First. The student would be obliged to go to the authorities, and learn to analyze them in their original and unabridged form, to get at the pertinent facts, which the case-book presents with many of their knotty points and difficulties eliminated. Second. The cost of such a case-book, which would be published in a notebook form, would be comparatively low, and this fact would enable the student to buy standard texts and other books of reference in addition to the case-books at little or perhaps no greater expense than is ordinarily involved in the purchase of the Harvard case-book; thus the student would be accumulating books of value to his future library, which is certainly not a quality appertaining to the ordinary case-book. Third. The instructor could make his instruction local, so far as he may find desirable and practicable, by substituting for the cases cited, either in whole or in part, cases from the local jurisdiction, or from jurisdictions considered as most authoritative by the local courts. Fourth. Each generation of students would be required to do its own work independently of the preceding classes, as the instructor could assign different cases each year, so far as he should see fit, and thus the abstracts and other work of one class would be unavailable for use by succeeding classes. Fifth. More ground would be covered,

as a great deal of the work could, if desired, be covered by the use of the texts, and only such points covered by the case-book as seemed to present unusual interest or importance.

While it does not seem by any means desirable that case-books should be discarded, it does seem that such a skeleton case-book as has been suggested above would involve a more valuable and practicable method of reading cases. The combined use of case-books and text-books has always seemed to the author the most rational method of teaching law, and the suggestions here offered seem to provide one way of effecting such a combination. The author does not assume to be qualified to assert that the suggestion above is adaptable to all

subjects of the law. He rather leans to the negative of that proposition; but it is believed that a conservative application of the general idea suggested, in certain instances and in teaching certain subjects, will tend toward the development of greater individuality, originality, and efficiency, and toward the removal of one of the greatest disadvantages against which the law school graduate has to struggle. He is, at best, not a lawyer when he graduates, and he will never become one until actual contact with the procedure and application of the law to the facts has made him one in the arena of the courts; but the less he is handicapped at the outset, the greater has been the efficiency of the law school, and vice versa.

Little Journeys to the Legal Profession

The Importance of Mental Attitude

By STANLEY E. BOWDLE
Of the Cincinnati Bar

MENTAL attitude is a great matter. The late Mary Baker Eddy said that it is everything. Elbert Hubbard—that thinker and book-binder to the leisure class—says that mental attitude is nearly everything. Doctor Dowie and Madam Tingley, indeed all the impresarios of the great cults, say that mental attitude is genius, power, success, and as essential to a St. Saëns concerto as to a well-digested meal.

Now surely all these high appraisals will sustain for mental attitude the general average statement that it is a number one concern and well worth considering for an evening or two.

Heretofore we have shown that dining, reputable and conspicuous dining, occupies a leading place as an impression maker for the young lawyer. And we have touched up Clothes and the Green Bag as next in prominence, though no law professor has taken time to say one word about these things. Mental attitude now completes a triumvirate of aids to legal life untouched by legal pens, and into this virgin land I now propose to timidly blaze a way for some legal genius with a gang plow.

I am not now speaking of mental attitude as affecting health or nervous power. Its effect upon fees and rela-

tions with clients is my subject—so let's at it.

The lawyer's static mental condition is of no importance—what he thinks in the undisclosed recesses of his soul matters not, (though it might be shocking to his client). It is his dynamic mental state that counts—the state manifested in his conversation with his client. My theme, then, might more properly be called Legal Conversation, and its fee-getting and client-keeping power.

My observation is that to the lawyer there is nothing so valuable, so potent in his dealing with clients, as a conversational attitude of contempt for judges and courts. At once the untutored legal yearling interrupts with a ponderous "why?" Well, such an attitude, taken with a client whose case is pending, convinces him in advance of your prowess, and dauntlessness, your ability to bear his cause through fiery perils, even "as Æneas through the flames of Troy the old Anchises bore." And you shortly find that your client believes in you, that your make-believe opinion of yourself has become his opinion. You have moved him from the miasmatic fogs of doubt, and he now lives in an atmosphere of victory. He sniffs the battle from afar, sees himself upon the heights, under the protecting ægis of your intrepid genius, and anon, in the calm, he counts the swag of victory, apprehensive of nothing but your bill.

Yea, the results are even more. He thereafter entereth your office deferentially; he speaketh quietly, and with no assurance; he ventureth no opinions on his own account, and troubleth you no more with the haphazard opinions of friendly lawyers who hand him their un-feed views at club and church; he tarrieth not long in your office, seeing that you are a man of visible impor-

tance; and he boweth himself out as he would from the chambers of a Supreme Court Justice. You are to him a Jeremiah Mason, a Rufus Choate, an undiscovered Webster—for the case has not been tried. His deferential visits are oases in your businessless Saharah, and you are radiant in the contemplation of yourself, fearing only the disillusioning day of trial.

This attitude, always decorously observed by the best lawyers (for the habit formed in youth clings to them through life, and long after there is any necessity for it), expresses itself on this wise: "Mr. Bellicose, our case unfortunately must be tried before Judge Way Up, an arrogant political accident. However, I have reversed him several times in the Supreme Court, and he has considerable respect for me." Or in this fashion: "Judge Baloon, I regret to say, is not dirigible. He is a man of unbending prejudices. His decisions are about as clear as a time-table to a woman. But my experience is that when the essential X-rays of a proposition are liberated from the incumbering data, and are set to vibrating, they generally penetrate the opaque headpiece of Judge Baloon."

These identical observations, vigorously announced, produce, as I can solemnly attest, the most profound results. Nothing short of the day of trial will efface them. They may be taken by the young lawyers as models and moulded to fit the local situation.

Should the case in hand be one fraught with grave danger, there is another remark that will act as a saline injection to your depressed client. You may say: "My great fear in this case is due to the fact that Judge Blunderbuss is likely to try it. He could not comprehend the law, were it hypodermically administered. It takes a grape

and shrapnel preface to an argument to wake him up, and then your proposition must be made as clear as Mother Goose Melodies."

At such a juncture this observation is most diplomatic. It steadies your client's knees, prepares him for a shock, and, best of all, affords you a kind of stage door exit from responsibility, when the foreman of the jury solemnly declares, "We, the jury, on the issues joined, find for the defendant" (your adversary).

But this remark, like all studied remarks, needs a little stage setting to give it strength. I therefore suggest to the young lawyer that a valise be kept in his office, with his books, and green bag, and silk hat, and other stage properties. A valise at times is an impressive thing, if thoughtfully brought upon the scene. It causes your client to think about you most decorously. It straightway occur-reth to him that you have just returned from Washington where you may have argued the case of your neighbor Mr. Bucket Shopper, whose fourteenth amendment privileges were lately so menaced; or he cogitateth immediately that you have just returned from New York, where no one goes save on big business. And should his face show that he cerebrateth not at all about you, you can help him by saying, "I have just returned from New York," or Washington, or Chicago.

This is the oldest piece of legal stage property in the world. The vigorous use of centuries has left no trace upon it. The lawyers of the little Persian satrapies used to say, "Ah, Mr. Nabob, glad to see you; I have just returned from Bagdad," whereupon Mr. Nabob looketh big-eyed and wonderously. This remark, then, is as historical as it is proper. A client, nervous about your prowess, is simply put in a trance by its timely use. It is a balm, a healing lotion, a sovereign soporific to that I-fear-you-ought-have-associate-counsel feeling that sometimes distresses clients and gives cold feet to their counsel whose caliber is being taken.

Getting a law practice is a great drama, sometimes comic, sometimes tragic; few cases and many sloughs of despond. The office is your stage, you the actor, and there are no crowded houses; but the one-man audience is watching you. So be sure you have the spittoon hidden, your unpaid bills in a drawer, law books lying about suggestively open, valise handy, a ready tongue speaking contemptuously of courts, a proud conversational swing, a readiness to speak of "grave constitutional questions" (but always speak slowly at this point); and, lo, shortly you will reach your office in a limousine car, from whose sumptuous cushions you will be privileged to give your friends the soul-less stare of modern life.

Latest Bar Examinations in Massachusetts and Pennsylvania

MASSACHUSETTS BAR EXAMINATION

(December 30, 1911)

1. (a) Brown, by his will, gave \$25,000 in trust for the benefit of his son Henry for life and thereafter for Henry's children. He omitted to name any one as trustee. He gave the residue of his property to his son John. Will the trust fail, and, if not, who will administer the trust?

(b) Jones, being deeply in debt and wishing to put his property beyond the reach of his creditors, bought and paid for a house and had the title conveyed to his friend Brown. Later he asked Brown for a deed, and, on his refusal, brought a suit in equity to compel a conveyance. Was he entitled to relief as prayed for?

2. Brown brought a suit in equity against Jones, and alleged that Jones had agreed in writing to sell to Brown 100 shares of Pullman stock at \$150 per share, delivery to be made in 60 days; that the 60 days had expired, and he, Brown, had duly tendered payment and demanded the stock, and Jones had refused to perform his agreement. The bill further alleged that the price of Pullman stock had advanced to \$160 per share. The prayer of the bill was for a decree requiring specific performance.

Jones demurred to the bill. Should the demurrer be sustained?

3. (a) Brown, by his will, gave his farm to his son John, but omitted to use the word "heirs." What estate will John take?

(b) Brown, by his will, gave his mill property to his son Thomas and his heirs, and provided that, in case they should ever undertake to alienate the property, they should forfeit their title, which should then go to John and his heirs. Thomas sold and deeded the property to X. Who became entitled to the property?

4. How does a minor differ from an adult in the matter of legal capacity

- (a) As to wills?
- (b) As to contracts?
- (c) As to conveyances?
- (d) As to lawsuits?
- (e) As to earnings?

5. (a) Jones died, owning personal property worth \$50,000, and leaving a will which disposed of only half of the same. X. was

named as executor of the will. Jones left a wife and two children. Who should administer the half not disposed of, and who should receive the same?

(b) What is meant by an administrator de bonis non cum testamento annexo?

6. A., B., and C. were the directors of a business corporation and were the owners of four-fifths of all the stock. At a directors' meeting, held November 1, 1910, all the directors being present, it was voted unanimously that the salary of B., as treasurer, be increased from \$3,000 per year to \$6,000 per year, such increase to date from January 1, 1910. It was also voted that the corporation, by way of accommodation, indorse a note of \$5,000, to be given by one Smith to A., B., and C. for money he was owing A., B., and C.

Was the corporation liable

- (a) For the increased salary or any part of it?
- (b) For the note or any part of it?

7. (a) Who may use as evidence at a trial the answers of a party to the suit to interrogatories filed in the cause, and what rights has the party interrogated as to the reading of such answers?

(b) When and by whom may interrogatories be filed, and how may a party be compelled to answer?

8. A. applied to B., a driver of wells, to drive a well to enable A. to obtain sufficient water to supply his boiler, and thereupon A. and B. signed the following written contract: "I, B., agree to procure water in the earth under A.'s factory by driving in the boiler room a two-inch pipe well until 20 gallons a minute of water is obtained. Price \$200 cash on completion of such well." B. drove such a well in the place designated, to the depth of 200 feet, which supplied 30 gallons of water a minute; but such water was brackish and unsuitable for such boiler use, by reason of which A. refused to pay.

B. brought suit, and proved the above facts. A., in defense, offered to prove conversation with B. before the signing of the contract as to the purpose for which the water was to be used, and that he told B. that

salt water was not wanted. The court ruled that the evidence so offered was inadmissible. To this ruling the defendant excepted. Was the ruling correct?

9. (a) Where should a transitory action by or against an executor or administrator be brought?

(b) In what county should an action of replevin be brought?

(c) A. commits a trespass on B.'s land. A. lives in Suffolk county, and B. lives in Norfolk county, and the land is located in Worcester county. Where may B. bring suit for the trespass?

10. (a) Name some of the actions which at common law survive the death of an injured party.

(b) Name three causes of action which survive by statute, in addition to those which survive at common law.

11. (a) If an issue of fact is found against the defendant upon an answer in abatement, what are the consequences?

(b) If a plaintiff prevails in an action against an administrator on a promissory note signed by his intestate, what forms of execution or executions are issued, and against whom, and against what estate does any such execution run?

12. (a) Name the three divisions of personal actions.

(b) How shall a defendant plead in order to avail himself of any facts in avoidance of an action?

(c) How, if at all, can a defendant in an action at law avail himself of an equitable defense?

13. Crow agreed to sell to Patridge 20 tons of hay at \$20 a ton, delivery to be made by Crow at end of 30 days. At that time Crow tendered 10 tons and stated that that was all he should deliver under the contract. Patridge took the hay tendered, insisting at the same time upon the delivery of the rest according to the contract. No more was delivered. The market value of hay at the date of delivery was \$25 a ton. Patridge sued Crow for breach of contract, claiming damages for nondelivery of rest of hay.

Crow sued Patridge for the hay delivered at \$25 a ton.

What judgment should be rendered in each case?

14. X., by agreement in writing, appointed A. his agent to sell hay, and stipulated in said agreement that A. should sell only to responsible parties. Under this agreement A. sold hay for X. for a number of years. A., acting for X., agreed with M., in writing, to sell him one hundred tons of hay. X. refused to deliver the hay. At the trial of the action of M. against X. for breach of this contract, X. offered in evidence his said agreement with A. He also offered evidence tend-

ing to prove that M. was not a responsible party. Both offers on plaintiff's objections were excluded by the court.

Were the rulings correct?

15. M. was the maker and P. the payee of a promissory note payable on demand for \$100, dated Saturday, December 30, 1905. In fact the note was made in P.'s presence and delivered to him on Sunday, December 31. P. on Monday, January 1, sold the note and indorsed it to H., who was a holder in due course for value. On the same day H. presented it to M. for payment, and payment was refused. On these facts can H. recover against M. in an action on the note?

16. Jenks, of New York, for valuable consideration, indorsed and forwarded to Drake, in Boston, a bill of exchange for \$500, drawn in New York by Parks on the Ascot Mills of Boston and payable to Jenks ten days after sight. On the day of its receipt Drake, the indorsee, presented it to the Ascot Mills for acceptance, and acceptance was refused. Ten days later Drake presented the bill to the Ascot Mills for payment, and payment was refused. Drake then had the bill protested for nonacceptance and nonpayment.

Who, if anybody, is liable to Drake?

17. The Bay State Bank paid to H., an innocent holder for value, the amount of a check for \$1,000, purporting to be drawn on it by one of its depositors, X. The signature to the check was in fact forged. The check had been indorsed to H. by P., also an innocent holder for value. On the demand of the bank, H. repaid it the \$1,000, and received the check. H., the holder, then offered to return the check to P., the payee, and demanded a return of the \$1,000. P. repaid \$100 and promised to return the rest, but subsequently refused to do it.

H., the holder, brought an action against P., the payee, for money had and received.

P. brought a similar action against H. for the \$100.

What judgment should be rendered in each action?

18. D. owed C. \$5,000. E. was employed by D. as bookkeeper. Without the knowledge of either D. or E., C. took out two policies of insurance, one on the life of D. and one on the life of E., each in the sum of \$1,000, and each payable in case of death to C.

D. died, leaving ample estate to pay all his debts, including that to C. E. also died. Neither D. nor E. were related to C.

After due proof of death in each case, demand upon the company for payment, and refusal by the company to pay, C. brought actions on the policies.

Can he recover

(1) In the case of D.?

(2) In the case of E.?

19. A tenant at will of a part of a building was negligent in the kindling and guarding of fires in the stoves used for heating the part of the premises let to him. Through such negligence the building was destroyed by fire. The other part of the building was occupied by the landlord.

Was the tenant liable in damages for the destruction of both parts of the building, or of either part, or of neither part?

20. (a) A. executes a lease to B. for 15 years, with the usual covenants for the payment of rent quarterly during the term. B. assigns the lease to C., who enters into possession. What remedies has A. for the rent accruing during C.'s occupancy, and against whom?

(b) If C. assigns to D., who enters into possession, who are liable to A. for rent?

21. (a) Who is a secured creditor in bankruptcy, and what are his rights?

(b) Is a creditor who holds a note of the bankrupt, indorsed by another person, a secured creditor within the meaning of the act?

22. Upon the death of one of two partners, what are the respective rights and liabilities of the surviving partner and of the administrator of the deceased partner, as to the immediate possession of the partnership property, as to its disposition, and as to distribution?

23. A. gave to B. a real estate mortgage in the usual form for \$10,000, with accompanying note. The mortgage was duly recorded by B. A. was not in fact indebted to B. at the time the mortgage was made, but the real purpose of the parties was to secure B. for the payment of such goods as B. might thereafter sell to A. B. sold goods to A. to the amount of \$3,000.

Was the mortgage a valid one as between the parties, and, if so, for what sum?

Was it valid against an attaching creditor of A. on an attachment made subsequent to the sale of the goods?

24. (a) The indorser on a promissory note, which was not paid at maturity, and which was duly protested, requested the holder to bring suit against maker. At the time of the request the maker was perfectly solvent and had property which could be attached. The holder did not bring suit against the maker. Two years thereafter, the maker being then insolvent, the holder brought suit against the indorser. Has the indorser any defense?

(b) What are the obligations and rights of cosureties?

25. (a) A. offered B. \$100 if he would set fire to C.'s house. B. took the money and burned the house.

Of what crime, if any, is A. guilty?

(b) If B. had failed to burn the house after accepting the money, of what crime, if any, would A. be guilty?

26. (a) What is the "full faith and credit" rule, and where is it found? Give an example.

(b) The legislature of one state passed a law providing that no citizen of another state should be capable of owning real estate in the first state. Jones, a citizen of California, and the Bangor Lumber Company, a corporation organized under the laws of Maine, each purchased real estate in the first state, and each received a deed of same. Which of the two, if either, took title?

27. A. loaned B. \$100, for which he received B.'s promissory note. A. later falsely represented to B. that the note had been lost or burned. Whereupon B. paid to him the \$100 called for by the note.

For what crime, if any, is A. liable?

28. A. and B. were passengers upon a railroad train. The same train carried, as freight, goods shipped by C. An accident occurred to the train, by which A. was instantly killed, B. injured, and the goods of C. destroyed. B., C., and the administrator of A. severally bring actions.

What must each plaintiff prove in order to maintain his action?

29. Thomas hired from Jones a horse, to be driven by him from one town to another and returned. On his way back Thomas, by mistake, took a wrong road, which led him through a third town and considerably increased the amount of travel for which he had originally hired the horse. During the unnecessary detour on the return trip the horse was injured, and was returned to its owner in its injured condition.

Jones sued Thomas in an action of tort in the nature of trover.

Can he recover in this action?

Can he recover in any other form of action?

30. John sued Thomas in an action per quod consortium amisit, to recover damages for the alienation of the affections of his wife. During the trial evidence was introduced upon the part of the defendant tending to prove that before he knew the plaintiff's wife he was insane, and that such insanity continued until long after the acts complained of by the plaintiff. Evidence was introduced by the plaintiff tending to show that the defendant was and at all times had been sane.

What instruction should the court give to the jury as to the liability of Thomas, if insane?

PENNSYLVANIA BAR EXAMINATION

(December 5 and 6, 1911)

1. A., as executor of the last will and testament of B., received \$5,000 in cash, which he used in his own private business, and afterwards, becoming heavily indebted to others, was duly declared an involuntary bankrupt. The beneficiaries under B.'s will now claim that the estate of B. is entitled to be first paid in full out of the assets of A. in preference to his merchandise creditors.

Are they entitled to this preference or not?

Give the reasons for your answer.

2. It was provided in the by-laws of the X. Company, a corporation organized in Pennsylvania under the Corporation Act of 1874, that "no check, promissory note or other obligation of the company shall be good unless the same be signed by the treasurer and countersigned by the president of the corporation." For some ten years, notwithstanding this by-law, large amounts of money were borrowed by the company upon promissory notes, signed by the treasurer only, which were regularly paid or renewed at maturity. In 1908 the treasurer fraudulently signed and issued to B. the company's notes to the aggregate amount of \$50,000, which were duly indorsed by B., and successively discounted in good faith by the R., Y., and Z. National Banks, and the proceeds thereof appropriated to their own use by the treasurer and B.

Are the R., Y., and Z. banks entitled, or not, to recover on these notes against the X. Company?

Give the reasons for your answer.

3. Explain and illustrate the meaning and application of the following terms: Felony, misdemeanor, warranty, tender, accord and satisfaction, suretyship, and executor de son tort.

4. To what extent were persons having an interest in a cause of action disqualified at common law from testifying in such cause, and in what respects have the common-law rules of evidence relating thereto been modified by the Pennsylvania statutes?

5. Explain the nature and application of the remedies which may be used by a landlord for the recovery of rent due him by his tenant, and give, as to each of such remedies, an outline of the procedure from its inception to the rendition of judgment and the satisfaction thereof.

6. A., the owner of a remainder in fee, created by his grandfather's will, devised the same absolutely to his wife B. After A.'s death a posthumous child was born to him by B., but died within six months after

its birth. Subsequently thereto, and before the death of the tenant for life, B. conveyed the remainder in fee to C. for the consideration of \$10,000 in cash, and afterwards died, leaving to survive her D., the only brother and surviving relative of A. The life tenant being now also deceased, D. claims the property as his.

Is there any foundation in law for this claim of D., and how can the question be brought into court for judicial determination?

Give the reasons for your answer.

7. At what stages in the proceedings and how can advantage be taken by the defendant of defects in the indictment against him?

8. If you have a claim against a decedent's estate, all of which has been squandered by his administrator, how will you proceed to recover the amount of your claim?

9. Under what circumstances is a master liable for the torts of his servant, a husband for those of his wife, a parent for those of his child, and a principal for those of his agent?

10. B. provided in his will as follows: "I direct that my son A. shall have for his own use and occupancy during the period of his natural life my home farm in the township of X., and that upon his death the use and occupancy of said farm shall be continued to his issue, if he shall have any, and, if not, then to his next of kin."

What interest or estate did A. take in the farm?

Give the reasons for your answer.

11. At the trial of A. on an indictment for the murder of B., the commonwealth showed by competent witnesses that B. had died on July 6, 1909, from a gunshot wound in the chest received by him on July 3, 1909. It then offered to prove by C. that C. was well acquainted with B., and had gone to B.'s house at 8 o'clock on the evening of July 3d, when he found B. lying on a sofa badly wounded in the chest, that B. then told C. that he, B., had been shot, at half past 5 o'clock that afternoon on his way home from his work by A., who met him in the road and deliberately aimed at and shot him, without any words having been passed between them, and that at the time of this statement B. was surely going to die of his wounds.

Should this offer of evidence have been admitted by the trial judge or not?

Give the reasons for your answer.

12. Explain and illustrate the meaning and application of the following maxims: "Where

the equities are equal the law will prevail," "Equity follows the law," "Equity looks upon that as done which ought to be done," "Equity acts specifically and not by way of compensation," and "Equity acts in personam."

13. A., being indebted to B., gave him an order for goods on C., who was in no manner indebted to A. B. presented this order at C.'s store and received part of the goods. The balance of them were made up into packages and receipted for by B., on C.'s promise to deliver them on the following day at B.'s home. The next morning A. made an assignment for the benefit of his creditors, upon hearing of which C. refuses to deliver the goods, and thereafter B. brought an action of assumpsit against him for their value.

Can he recover therein or not?

Give the reasons for your answer.

14. A. died intestate seised of a small piece of land, upon which B. held a mortgage for \$500, and leaving to survive him his wife, C., who duly claimed her widow's exemption, under the act of April 14, 1851, which was set apart to her by the orphans' court, \$40 in personal property and \$260 out of the land; the appraisers having made return that the land could not be divided without injury to and spoiling the whole. Upon foreclosure of the mortgage by B., the land was sold for \$300, exclusive of the costs, which was awarded by the sheriff to B.; his mortgage being the first lien on the land, but not a mortgage for purchase money.

C. is dissatisfied with this award, and claims that she is entitled to the \$260 set apart to her out of the land.

How is she to obtain a judicial determination of the question, and what disposition should be made of it by the court?

Give the reasons for your answer.

15. What property of a decedent was available at common law for the payment of his debts, what property of a decedent is now available for this purpose in Pennsylvania, and what steps must be taken by a creditor to secure the payment of his claims against a decedent's estate out of the respective classes of property available for such purpose?

16. A. and B. are copartners. The partnership property consists both of goods and of a large and valuable storehouse for the transaction of business. To what extent and how can a judgment creditor of A. obtain satisfaction of his judgment from the partnership property?

Give the reasons for your answer.

17. What judicial power is conferred by the Constitution upon the United States; and in what courts is this power now vested either by the Constitution itself or by the acts of Congress?

18. Give some account of the courts of justice existing in England about the time of the reign of Edward I, pointing out their relations to each other, and the general character and limitations of the jurisdiction of each of them.

19. Explain and illustrate the meaning of the terms "duplicity," "departure," and "pleading over," when used in relation to pleadings at common law. Explain the purpose of the rules against both duplicity and departure in such pleadings; and state what defects in the pleadings on one side are cured by pleading over on the other.

20. At a sheriff's sale of the real estate of C., A., who had a judgment against C., refrained from bidding on the promise of B., a bidder at the sale, that, if A. did not bid up the property, he, B., would see that A.'s judgment was paid in full. The property was sold to B. Upon the distribution of the proceeds a part of A.'s judgment remained unpaid. He now brings an action of assumpsit against B. to recover the balance.

Can he recover or not?

Give the reasons for your answer.

21. By his last will and testament, A. devised all of his real estate to his daughter, B., provided she should not marry before attaining the age of 45 years, and, in case of her marriage at any time before reaching that age, then to his nephew, C., and his heirs.

What was the effect of this devise?

Give the reasons for your answer.

22. A. drew to the order of B. his promissory note for \$5,000, bearing date the 10th day of July, 1906, and payable three months after the date thereof. B. indorsed the note on the day of its date, when it was discounted by the X. National Bank, and the proceeds thereof, at B.'s request, credited to the account of A., by whom the money was subsequently drawn out and used. Upon maturity, the note was duly protested for non-payment by A., and, on November 9, 1906, no payment having been made thereof by either A. or B., was sold and assigned by the bank to C., who paid therefor the sum of \$3,000. On demand by C., B. has refused to pay the note, or any part thereof, alleging that he was an accommodation indorser only for A., and that C., not being an indorsee of the note in due course before maturity, has no right of action whatsoever against him thereon.

As counsel for C., what advice will you give him as to his rights on the note against B.?

Give the reasons for your answer.

23. When a copartnership firm and its individual members become bankrupt, how are the firm assets and the individual property

of its members respectively distributed amongst the firm and individual creditors?

Give the reasons for the method of distribution adopted by you.

24. Draw an indictment against B. for murder in the first degree, supplying whatever particulars may be necessary to make the indictment complete.

25. B., an iron manufacturer in X., wrote to A., an iron dealer in Y.: "I have to-day sent by way of the X. R. R., consigned to you, 30,000 pounds of blooms in 300 pieces, which please deliver to the order of C. at Z." The blooms arrived at Y., and were received by A., who immediately sent 80 pieces to C., together with a letter saying that the remainder would be held subject to C.'s order. Soon thereafter C. wrote to A., requesting him to send the remainder by boat; but before the boat had arrived and was ready to receive them, they were attached in A.'s hands by D., a creditor of C. B., hearing of the attachment, immediately notified A. not to deliver any of the blooms in his possession to C.'s order.

Who has the right to the blooms, and how is the question to be judicially determined?

Give the reasons for your answer.

26. A., the payee of a check for \$6.50, raised the sum payable therein to \$60.50. He then indorsed the check and offered it to B., a clothing merchant, in payment for a suit of clothes purchased from B., for \$15. B., not having sufficient money in hand to cash the check for the excess over the value of the clothes, applied to C., who cashed the same without B.'s indorsement. A. received the clothes from B., and \$45.50, the balance of the proceeds of the check. On presentation of the check at bank, the bank, discovering the alteration therein, refused payment.

What remedy, if any, has C. against B., and can he recover the amount of the check from him or not?

Give the reasons for your answer.

27. What are the rights and remedies of a person who has suffered injuries through the concurrent negligence of two or more corporations or persons? And what are the rights and remedies of the joint tort-feasors in respect to each other?

28. A statute of the state of Y. imposed a license tax of \$300 per annum on all auctioneers. Is this statute in conflict with any provision of the Constitution of the United States, when applied to an auctioneer whose sole business is to sell, in the original packages, goods imported from another state?

Give the reasons for your answer?

29. In the trial upon an indictment for conspiracy, what are the rules of law governing the admissibility in evidence of the

acts and declarations of the alleged co-conspirators of the defendant?

30. A., after attaining his majority, in 1902, gave to his father, B., a written acknowledgment that he had received from B. \$2,000 for school expenses during his minority, and also promised therein to repay to B. that amount out of the first moneys which should thereafter come into his possession. Upon B.'s death, a year later, it was claimed by A.'s brothers that the \$2,000 should be set off against A.'s distributive share in B.'s estate. This A. refuses to permit.

Can the set-off be legally enforced, and how should the brothers proceed to have the question judicially determined?

Give the reasons for your answer?

31. What is necessary to constitute a valid and irrevocable gift of personal property (a) *causa mortis*; (b) *inter vivos*?

32. What are the duties of an attorney at law to the court, to his client, and to his professional brethren?

33. Explain the distinction between "mistake of fact" and "mistake of law," in so far as they may respectively affect the question of the guilt or innocence of the defendant in a criminal prosecution.

34. A. sued B., his physician and surgeon, in trespass to recover damages for malpractice in the treatment of a broken limb, and obtained a verdict for \$500. After this verdict was rendered, and pending a motion for a new trial, B. brought suit against A. before a justice of the peace for medical and surgical treatment, and obtained a judgment for \$100. Afterwards the rule for a new trial was discharged by the court. B. now wishes to set off the judgment obtained by him against the judgment obtained by A.

Can he do this, and by what proceeding can the question be brought into court for judicial determination?

Give the reasons for your answer.

35. Give some account of the nature and scope of the action of replevin at common law, and of its nature and scope under the practice now prevailing in the state of Pennsylvania.

36. Name, and briefly explain the nature of the different tenures by which lands were held in England prior to the reign of Charles II.

37. A. died intestate in the year 1900. At the audit of the account of the administrator of his estate in 1902, his widow made claim for the principal and interest of a promissory note, given to her by A. after their marriage in 1875, for the sum of \$1,500, and payable on demand, with interest from date. The note was duly proved, and it was also proved that, at or immediately before the

time it was given, the widow had received a legacy for the amount therein named. The claim was resisted by A.'s creditors and next of kin, on the ground that it had not been sufficiently proved, that it was barred by the statute of limitations, and that in any event the widow was not entitled to interest thereon, except from the time of her husband's death.

Should or should not the claim have been allowed, either in whole or in part?

Give the reasons for your answer.

38. A. had been speculating in wheat through B., a commission broker. To secure to B. an indebtedness thus incurred to him, and to provide margins for future speculations, he executed to B., his promissory note, and assigned as collateral security therefor a mortgage held by him on certain lands in Pennsylvania. B. thereafter issued a sci. fa. on the mortgage to enforce its collection, when A. filed a bill in equity to enjoin these proceedings and to set aside the assignment, on the ground that the transactions for which it was given were gambling transactions, and therefore illegal and void.

Should this relief here prayed for be granted or not?

Give the reasons for your answer.

39. Briefly discuss the origin, the nature, and the extent of the admiralty jurisdiction in the United States, particularly stating under what authority and by what courts it is exercised, and how its limitations are determined in respect to both subject-matter and locality.

40. What are the purposes of a bankruptcy law? Under what authority and by whom are bankruptcy laws enacted in the United States? And what courts have jurisdiction in bankruptcy proceedings?

41. Briefly discuss the "police power" in respect to its origin, its nature, and its limitations, and give two or more concrete examples of its application in the United States.

42. A. painted an advertisement of his business upon the wall of a building belonging to B., which building at the time was under lease from B. to C., who was in possession of the premises, and consented to the painting of the advertisement. B. then brought an action of trespass against A. to recover damages for the injury done by the painting on the wall of the building.

Can he recover? If so, why? If not, why not?

43. A. leased to B. a house, No. 100 Main street, in the borough of X. B. being in arrears for rent, A. distrained certain household goods of C., which had been removed from the house and were standing on the sidewalk of the demised premises and about to be loaded into a wagon.

Can C. recover the goods, and how should he proceed to have this question judicially determined?

Give the reasons for your answers.

44. What is an ultra vires contract, and under what circumstances, if at all, can such a contract be enforced against either of the parties to it?

Give the reasons for your answer.

45. What are the provisions of the Constitution of Pennsylvania respecting the "freedom of the press," the "rights of conscience," and the "freedom of religious worship."

46. Briefly explain the origin, nature, and purpose of any five equitable remedies which you can recall; and illustrate the application of each of them by concrete examples.

47. A. was the nephew of B., an old man without children, who owned much property in the town of X. For many years, at B.'s request, A. had rendered him valuable services in the management of this property, and B. had often said to his friends that A.'s services had been of great value to him, and that he was going to give A. a certain lot and house, into which A. had moved with B.'s consent, upon which he had made many valuable improvements, and which was in his possession at the time of B.'s death. B. died intestate, without having made an actual conveyance of the lot and house to A., or otherwise compensating him for the services rendered.

A. now wishes to enforce the conveyance of the house and lot to himself by the administrator of B.'s estate, and has employed you to conduct the case for him.

In what court, and how, will you proceed, and can you succeed in obtaining a decree directing the conveyance to be made?

Give the reasons for your answer.

48. When and how was the Constitution of the United States adopted, and what is its general purpose and effect: (a) As respects the functions and powers of the federal government of the United States; and (b) as respects the functions and powers of the individual states?

Dates, Places, and Filing of Application for Bar Examinations

THE following items in regard to the Bar Examinations to be held in the different states during the period from May 15, 1912, to May 15, 1913, have been compiled from information specially supplied for the purpose by the proper authorities in each state.

No attempt has been made to indicate the educational or personal qualifications which are demanded in any state to entitle the applicant to be examined, or to specify whether an examination is required, or whether the examination be oral or written, or both oral and written, or to state except incidentally, the authorities by whom the applicant's petition is passed upon. The greatest variety exists in the requirements in the different states. In many jurisdictions the graduates of certain named law schools within the state are entitled to admission on presentation of their diploma. In other states examination of all applicants is required. Some states require the applicant to have had a certain amount of general or collegiate education, followed by three years of legal study, while others limit their requirements to one or two years study of the law.

Many states have a special Board of Law Examiners, whose certificate is essential to obtaining license to practice. In others the examination is conducted personally by the justices of the Supreme Court, intermediate courts, or county courts, and the examinations are held specially in each case, as occasion

arises, or at specified times regulated by statute or rule of court.

To classify the rules on these matters is outside of the scope of this article, but reference has been made to some person in each state qualified to furnish desired information. Those who wish detailed information as to the rules of more than one state should write to the West Publishing Company for a free copy of the pamphlet entitled "Rules for Admission to the Bar in the Several States and Territories" (6th Edition, 1911).

The object of the following synopsis is to give the time and place of each regular examination, and to indicate how long in advance notice of intention to take such examination must be given, the person with whom application must be filed, and the amount of the examination and other fees required in each jurisdiction, and, lastly, the person to whom inquiries for detailed information may properly be addressed.

Alabama. No advance notice of intention to be examined is required. The examination fee of \$10 may be paid at any time before the examination begins. Examinations are scheduled to be held as follows: Montgomery (State Capitol), July 9, 1912, and January 14, 1913.

For detailed information and blanks, address Thomas E. Knight, Greensboro, J. W. Thorington, Montgomery, or R. F. Ligon, Clerk of the Supreme Court, Montgomery.

Arizona. The Board of Bar Examiners existing under the territorial government has resigned and a new State Board had not yet been established at date of writing; hence no information is available.

Arkansas. A petition for a license must be filed (by persons not already having a license from the circuit court) one week prior

to the date on which it will be heard. All petitioners are examined by the Supreme Court, there being no special Board of Bar Examiners. The regular quarterly examinations are scheduled to be held as follows: Little Rock, July 1, 1912, October 7, 1912, January 6, 1913, and April 7, 1913. No examination fee is required, but a fee of \$15 is payable on admission to practice.

For detailed information, address P. D. English, Clerk of the Supreme Court, Little Rock, Ark.

California. Bar examinations are conducted by the District Courts of Appeal of the three appellate districts respectively. Intention to be examined must be signified (at least one day in advance in the First district; ten days, in the Second district; three days, in the Third district) by filing a written application. A fee of \$10 is payable at time of filing. Examinations are held as follows: San Francisco, First district, every three months.¹ Los Angeles, Second district, July 15, 1912, and January 20, 1913. Sacramento, Third district, July and January.² Examinations may be held at other dates at the pleasure of the courts.

Applications and inquiries should be addressed to the clerk of the District Court of Appeal of the particular district in which it is desired to be examined.

Colorado. All credentials necessary in case of application must be filed with the secretary of the Committee of Law Examiners at least ten days prior to examination. No filing or other fee is chargeable by the committee, but \$20 must be paid before the clerk of the Supreme Court can issue license to practice. Examinations are held in June and December, the exact dates being specified and published about six weeks in advance.

For detailed information, address W. A. Spangler, Esq., 720 Kittredge Building, Denver.

Connecticut. Application to take the May and December examinations must be filed with the Superior Court where the examination is to be held, not later than May 1st or December 1st, respectively. The examination fee of \$10 is payable at least one week prior to examination. Examinations are scheduled as follows: New Haven, May 31, and June 1, 1912. Hartford, December 27 and 28, 1912.

For detailed information, address Clerk of the Superior Court, New Haven, Connecticut.

¹ In the First district the rules of court do not designate any special dates of examination, and in supplying information to the editor the clerk of court stated that dates of examinations are not fixed at any considerable time in advance.

² Exact date of regular examinations for the coming year have not been fixed upon.

Delaware. Examinations are held before each term of court at dates fixed by the Board of Examiners. The terms of court are scheduled to begin as follows: Wilmington (Newcastle County), September 16, 1912, November 4, 1912, January 6, 1913, March 3, 1913, and May 5, 1913. Dover (Kent County), July 1, 1912, October, 21, 1912, February 17, 1913, and April 21, 1913. Georgetown (Sussex County), June 17, 1912, October 7, 1912, February 3, 1913, and April 7, 1913.

For detailed information, address H. H. Wood, Secretary of Board of Law Examiners, Dupont Building, Wilmington, Del.

Florida. Applicants must file at least ten days prior to the examination. No examination fee is required, but the successful applicant must pay a \$5 fee to the clerk of the Supreme Court before the latter can issue certificate of admission. Examinations will be held as follows: Tallahassee, June 11, 1912, and January 14, 1913.

For detailed information, address Hon. Milton H. Mabry, Clerk of the Supreme Court, Tallahassee, Fla.

Georgia. Applicants are examined in the circuit where they reside or have studied law, by the judges of the superior courts. Examinations are held on the same dates throughout the state, the questions asked being prepared by the State Board of Bar Examiners. The examinees' answers are transmitted to the Board, which thereupon reports the results back to the judges, with recommendations as to admission of applicants. Petition for admission must be filed with the judge of the superior court ten days prior to examination, and in so filing the applicant must present receipt from the chairman of the Board of Bar Examiners, showing payment of the \$15 examination fee. Examinations are held on the following dates: June 12, 1912, and December 11, 1912.

For blanks and detailed information, address Alexander C. King, Attorney, Chairman of the Board of Bar Examiners, Atlanta, Ga.

Idaho. Credentials and applications for admission must be filed with the clerk of the Supreme Court not later than the day before examination. No fee is required as prerequisite for being examined, but fees amounting to \$27 are payable as a condition of admission. The following examinations are scheduled: Boise, May 18, 1912, and September 14, 1912. Lewiston, October 12, 1912. Boise, November 30, 1912. Dates have not yet been fixed for examinations during 1913.

For detailed information, address I. W. Hart, Clerk of Supreme Court, Boise, Idaho.

Illinois. Application for admission must be filed with the secretary of the Board of Bar Examiners at least three weeks prior to examination, a fee of \$10 being payable on filing. Examinations are scheduled to be

held at the following times and places: Chicago, June 25, 1912. Springfield, October 1, 1912. Mt. Vernon, December 3, 1912. Ottawa, February 25, 1913.

For detailed information and blanks, address Wm. B. Wright, Secretary State Board of Law Examiners, Effingham, Ill.

Indiana. Applicants are admitted at any time that the court is in session, upon motion of a member of the bar. There is no examination, and the only requirements are that the applicant shall be twenty-one years of age, a citizen of Indiana, and of good moral character.

Iowa. Applications must be filed with the clerk of the Supreme Court at least ten days before the first day of the term, at which the applicant asks to be examined. A fee of \$5 must be paid to the clerk before the examination is begun. Examinations are scheduled as follows: Des Moines, May 27, 1912, and October 1, 1912. Iowa City, June 4, 1912.

For detailed information, etc., address B. W. Garrett, Supreme Court, Des Moines, Iowa.

Kansas. Applicant must file his petition at Topeka with the clerk of the Supreme Court thirty days prior to the examination, paying at the same time an examination fee of \$25. Examinations are scheduled as follows: Topeka, June 17, 1912, and January 20, 1913.

For detailed information, address Wm. Easton Hutchison, Secretary of the State Board of Law Examiners, Garden City, Kansas.

Kentucky. Applicant must file with the clerk of the circuit court of the county in which he resides a certificate of good character, after doing which, and at least ten days before the beginning of the next regular term of court, he may file a written application for license. At a date set during such term he is examined by the circuit judge and at least two other lawyers. There is no general Board of Examiners for the entire state, and no general examinations are held. Admission to the circuit court in any county entitles an attorney to appear before the Court of Appeals.

Louisiana. There are four Commissions on Admission to the Bar, each consisting of five members, and located as follows: (1) New Orleans. (2) Monroe. (3) Shreveport. (4) Opelousas. Written application for admission, filed with the clerk of the Supreme Court, is referred by him to the proper Commission. The Commission then examines the applicant on stated subjects.³ If passed by the Commission the applicant presents its certificate to the Supreme Court, which exam-

ines him in open court.⁴ No examination fee is charged, but prior to issue of license a successful applicant must pay to the clerk of the Supreme Court a fee of \$10, and his name must be published on the court bulletin board on three judicial days.

Maine. Application must be filed four weeks prior to examination, and a fee of \$20 is payable at the time of filing. Examinations are scheduled as follows: Portland, August 6, 1912. Bangor, February 4, 1913.

For detailed information, address John B. Madigan, Secretary of the Board of Examiners, Houlton, Maine.

Maryland. Petition, duly verified by affidavit, and certificate of instructor or law school dean under whom petitioner has studied, must be filed with the clerk of the Court of Appeals ten days prior to examination, and a fee of \$25 paid at the same time. An examination will be held in Baltimore on June 3 and 4, 1912, and another in the latter part of November, 1912 (exact date for which is not yet fixed).

For detailed information, address John Hinkley, Secretary of the Maryland State Board of Law Examiners, 215 Charles Street, Baltimore, Md.

Massachusetts. Petition for admission must be filed with the clerk of court of the county in which petitioner has last studied law, at least five days prior to the date of examination, and if possible, at the same time an examination fee of \$15 (\$10 if applicant has taken a previous examination) is payable. Examinations are scheduled as follows: Boston, June 28, 1912, and December,⁵ 1912. Petitions and blanks may be obtained from the clerk of court of any county.

For detailed information, address Hollis R. Bailey, Attorney, 19 Congress St., Boston, Mass.

Michigan. Petition for admission must be filed with the secretary of the Board of Law Examiners at least ten days prior to examination, a fee of \$10 being paid at the same time.⁶ Two examinations are held annually, taking place at the Capitol in Lansing, Michigan, upon the second Wednesday of the April and October terms of the Supreme Court.

For detailed information, address Wiley W. Hyde, Secretary State Board of Law Examiners, Grand Rapids, Mich.

Minnesota. At least three weeks prior to the examination, an applicant must file his petition with the secretary of the State

⁴ Examination by the court is held on the first Monday on which the court sits, in June, October, December, February, and April.

⁵ Exact date for the December examination in Massachusetts not yet fixed.

⁶ Such fee entitles petitioner to be examined at two examinations, if necessary.

³ Dates of examination by Board were not supplied the editor.

Board of Law Examiners. A fee of \$15 is payable at any time before the examination. All examinations are held in St. Paul. The dates scheduled for the ensuing year are as follows: June 11, 1912, October 8, 1912, and February 4, 1913.

For detailed information, address Eli Southworth, Secretary of the Board of Law Examiners, Shakopee, Minn.

Mississippi. No information received by editor as to time, place, etc., of examinations.

Missouri. At least ten days prior to examination the applicant must file his petition with the clerk of the Supreme Court and pay a fee of \$10. Two examinations are held per year. One is scheduled for June 17, 1912. The exact date of the January, 1913, examination has not been fixed. All examinations are held in Jefferson City.

For detailed information and blanks, address John D. Allen, Clerk Supreme Court, Jefferson City, Missouri.

Montana. Application for admission must be filed with the clerk of the Supreme Court at least ten days prior to the date of examination. No filing fee is charged, but a fee of \$5 is payable upon admission before license to practice can be issued. Examinations are scheduled as follows: Helena (at State Capitol), June 5, 1912, and December 4, 1912.

For detailed information, address John T. Athey, Clerk of Supreme Court, Helena, Montana.

Nebraska. Applicant must file his application with the clerk of the Supreme Court, and pay a \$5 filing fee, at least four weeks prior to examination. The regular examinations are scheduled to be held as follows: Lincoln (at State Capitol), June 11, 1912, and November 19, 1912.

For detailed information, address H. O. Lindsey, Clerk of Supreme Court, or W. L. Anderson, Secretary of Bar Commission, both resident at Lincoln, Nebraska.

Nevada. Application for admission to the bar must be made to a district judge, by whom it is referred to the Supreme Court. Prior to the examination the applicant must deposit \$35 with the clerk to cover admission fees, such deposit to be returned if applicant is unsuccessful. Examinations are held at Carson City the first Monday of each term of court (July, October, January, and April).

For detailed information, address Joe Josephs, Clerk of the Supreme Court, Carson City, Nevada.

New Hampshire. Application to be examined and admitted at the ensuing examination must be filed fourteen days before the first Tuesday in June and December. No fees are charged. Examinations are scheduled to be held as follows: Concord, June 29, 1912, and December 17, 1912.

For detailed information, address the

Clerk of the Supreme Court, Concord, New Hampshire.

New Jersey. Notice of intention to apply for examination must be filed with the clerk of the circuit court of the county in which applicant resides or has studied law, at least two months in advance. A certificate from such clerk and other required proofs of qualification must be filed with the clerk of the Supreme Court twenty days before the first day of the term. No examination fees are charged, but a fee of \$14 is payable before license to practice can be issued to a successful applicant. Examinations are scheduled to be held as follows: Trenton (at State Capitol), June 7, 1912, November 8, 1912, and February 21, 1913.

For detailed information, address the Clerk of the Supreme Court at Trenton, New Jersey.

New Mexico. Petition must be filed with the secretary of the Board of Examiners at least thirty days prior to examination, a fee of \$15 being paid at that time. Examinations are scheduled to be held as follows: Santa Fé, September 2, 1912, and January 8, 1913.

For detailed information, address Jose D. Sena, Secretary of Board of Bar Examiners, Santa Fé, New Mexico.

New York. The last fifteen days prior to examination, applicant must file with the secretary of the Board of Examiners written application and proof of qualifications. A fee of \$15 must be paid at that time. Examinations are scheduled as follows: New York City, Albany, and Rochester, June 25, 1912, and January, 1913.^{*} New York City, Albany, and Syracuse, October 25, 1912. New York City, Albany, and Buffalo, April, 1913.^{*}

Applications and inquiries should be addressed to F. M. Danaher, Secretary, State Board of Law Examiners, 41 Benson Building, Albany, New York.

North Carolina. Applications for admission must be accompanied by certain specified proofs of qualifications, and may be filed with the clerk of the Supreme Court at any time before 9:30 a. m. on the day of examination. A fee of \$23.50 must accompany the application, of which sum \$22 will be returned in case of failure to pass examination. The regular written examinations are scheduled to be held by the Justices of the Supreme Court as follows: Raleigh, August 26, 1912, and February 3, 1913.

Inquiries, etc., relating to admission, should be addressed to the Clerk of the Supreme Court, Raleigh, North Carolina.

North Dakota. Application for admission on examination must be filed with the

^{*} Exact dates of 1913 examinations are not yet fixed definitely.

clerk of the Supreme Court in Bismarck, and must be accompanied by a fee of \$18 (of which \$3 will be returned in case of failure to pass). Examinations are scheduled to be held as follows: Grand Forks, June 4, 1912. Fargo, December 3, 1912.

For detailed information and blanks, address R. D. Hoskins, Clerk of the Supreme Court, Bismarck, North Dakota.

Ohio. Applicants must register with the clerk of the Supreme Court before they begin their study of the law. Applications to be examined for admission must be filed with the clerk between sixty and thirty days prior to examination and must be accompanied by a fee of \$8. Examinations are scheduled as follows: Columbus, June 4 and 5, 1912, and December 3 and 4, 1912.

For detailed information, address Hon. Frank E. McKean, Clerk of the Supreme Court, Columbus, Ohio.

Oklahoma. Application in writing must be filed with the clerk of the Supreme Court in less than thirty days prior to the semi-annual meeting of the Bar Commission, and must be accompanied by an examination fee of \$12. Regular examinations are scheduled to be held as follows: Oklahoma City, June 4, 1912, and December 3, 1912.

For information and blanks, address Clerk of the Supreme Court, Oklahoma City, Oklahoma, who is ex officio Secretary of the Bar Commission.

Oregon. Applicant may file his application at any time before examination begins. A fee of \$10 must accompany application. Regular examinations will be held as follows: Salem, October 7, 1912, and in June.* Pendleton, October 28, 1912, and May 5, 1913.*

Application and inquiries should be directed to J. C. Moreland, Clerk Supreme Court, Salem, Oregon.

Pennsylvania. Under certain circumstances applicants for admission must pass a preliminary examination and register as law students before commencing their legal studies. All applicants (except such as are admitted on license from another state) are required to pass a final examination. Applications must be filed twenty-one days before examination, and be preceded by four weeks published notice of intention to apply. A filing fee of \$25 must accompany the application. The preliminary and final examinations are held at the same time, and for the coming year are scheduled as follows:

*The date of the June examination in Salem is not fixed by any definite rule, and the day on which it will be held in 1913 has not yet been fixed.

*Special examinations will be held at such times as may be ordered by Supreme Court on petition of five applicants.

Pittsburg and Philadelphia, July 2 and 3, 1912, and December 3 and 4, 1912.

For detailed information and blanks, address Charles L. McKeehan, West End Trust Building, Philadelphia, Pennsylvania.

Rhode Island. Applications for admission must be filed ten days in advance of examination, and must be accompanied by a fee of \$10 on the first occasion, and \$5 for subsequent examinations. Examinations are held in Providence in the last week in March and September.

For detailed information, address Edward C. Stiness, Secretary, Board of Bar Examiners, Providence, Rhode Island.

South Carolina. Applications are filed with the clerk of the Supreme Court not less than two weeks prior to examination, and are referred by the court to the State Board of Bar Examiners for examination by the board of the applicant's qualifications. A fee of \$5 must be paid to the clerk on filing, and a second fee of \$5 is payable on admission, before license can be issued. The regular examinations are scheduled as follows: Columbia, December 4 and 5, 1912, and May 7 and 8, 1913. Special examinations may be held at such other times as the board may determine on.

For detailed information, address Clerk of Supreme Court, Columbia, South Carolina.

South Dakota. Applications for admission may be filed at any time prior to examination. A fee of \$5 is payable at time of filing application. Examinations are scheduled as follows: Pierre, October 1, 1912, and April 1, 1913.

For detailed information and blanks, address Frank Crane, Clerk Supreme Court, Pierre, South Dakota.

Tennessee. Application must be filed with the secretary of the Board of Examiners at least ten days before the examination, and must be accompanied by a fee of \$5. Examinations have been scheduled as follows: Chattanooga, June 5 and 6, 1912. Lebanon, June 7 and 8, 1912. Knoxville, June 11 and 12, 1912. Nashville, June 13 and 14, 1912, and January 23 and 24, 1913. Memphis, November 14 and 15, 1912.

For detailed information, address James L. McRee, Tennessee Trust Building, Memphis, Tennessee.

Texas. No notice of intention to be examined is required to be given in advance. The examination fee of \$10 is payable at any time before the examination begins. A separate Board of Bar Examiners exists in each of the eight judicial districts of Civil Appeals. Dates and places of examination are as follows: First District, Galveston, July 8, 1912, October 14, 1912, January 13, 1913, and April 14, 1913. Second District, Ft.

Worth, July 1, 1912, October 7, 1912, January 6, 1913, and April 7, 1913. Third District, Austin, July 2, 1912, October 1, 1912, January 7, 1913, and April 1, 1913. Fourth District, San Antonio, June 3, 1912, September 2, 1912, December 2, 1912, and March 3, 1913. Fifth District, Dallas, May 15, 1912, August 21, 1912, November 20, 1912, and February 19, 1913. Sixth District, Texarkana, June 24, 1912, October 7, 1912, January 6, 1913, and April 7, 1913. Seventh District, Amarillo, July 30, 1912, October 29, 1912, January 28, 1913, and April 29, 1913. Eighth District, El Paso, July 1, 1912, October 7, 1912, January 6, 1913, and April 7, 1913.

For additional details, blanks, etc., address either the Clerk of the Court of Civil Appeals or the Chairman of the Board of Bar Examiners of the district in which admission is desired.

Utah. Application for admission must be filed at least five days before date of examination. No fee is payable for examination, but a fee of \$25 must be paid before license to practice can be issued to a successful examinee. Examinations are scheduled as follows: Supreme Court Room, Salt Lake City, October 10, 1912, February 6, 1913, and May 8, 1913.

For detailed information, address H. W. Griffith, Clerk of the Supreme Court, Salt Lake City, Utah.

Vermont. Every applicant for admission must file his application with the clerk of the general term of the Supreme Court at least ten days before the examination. No examination fee is charged, but \$5 must be paid before a certificate of admission can be issued. Only one examination is held per year. This takes place at Montpelier on the first Tuesday in October (October 1, 1912).

For detailed information as to qualifications, etc., address Hon. E. H. Deabitt, Montpelier, Vermont.

Virginia. Application for admission must be filed five days prior to examination, and must be accompanied by a fee of \$10. Examinations are scheduled as follows: Roa-

noke, June 26, 1912. Richmond, November 6, 1912.¹⁰

For detailed information, address M. B. Watts, Secretary of Board of Bar Examiners, Richmond, Virginia.

Washington. Application must be filed with the clerk of the Supreme Court not less than five days nor more than thirty days before examination, and must be accompanied by a fee of \$25. Examinations are scheduled as follows: Olympia, May 16, 1912, October 15, 1912, and January 16, 1913.

For detailed information, address C. S. Reinhart, Clerk of Supreme Court, Olympia, Washington.

West Virginia. At time of going to press, no information had been received by the editor.

Wisconsin. Application for admission must be filed with the secretary of the Board of Law Examiners not less than thirty days prior to examination. No examination fee is charged. The following examinations have been scheduled: Madison, July 16, 1912. Milwaukee, January 21, 1913.

For detailed information, address L. J. Rusk, Secretary of Board of Law Examiners, Chippewa Falls, Wisconsin.

Wyoming. The Board of Bar Examiners holds two regular meetings during the year. At these meetings action is taken as to who should be examined and at what time examinations shall be held. These regular meetings of the Board take place on the first Monday in April and October. Applications to be examined and admitted to the bar must be filed with the Supreme Court at least thirty days prior to the meetings of the Board. A fee of \$10 is charged in all cases in which no examination is required. If the nature of the application requires examination, the fee charged is \$15. In both cases it must be paid at date of filing petition.

For detailed information, address W. H. Kelly, Clerk of the Supreme Court, Cheyenne, Wyoming.

¹⁰ Owing to recent changes in the law governing examinations, there will probably be a change in the date of the second examination during 1912.

Notes and Personals

A course of instruction in "Office Practice" was inaugurated this season in the University of Pennsylvania Law School. At the opening of the fall term each student in the school has placed in his hands four so-called problems; different sets of problems being given to each of the three classes, but all relating to some question which is likely to be presented to the young lawyer during his first year in practice. Each student is obliged to draw up his papers in relation to a problem and hand them in on a given date. The papers thus submitted are examined and corrected by a graduate of the law school and a member of the bar; the faculty in consultation with the examiners having previously determined on a model form of answer. The students are privileged to select the jurisdiction in which they expect to practice. Where a jurisdiction is selected, as Illinois, or California, or Texas, the students' papers are corrected by members of the bar in the respective jurisdiction. In this course no marks or credits are given. The papers are returned, and the students are expected to correct and recorrect them until they are in proper form. No student can take any examination at the end of the year in the University of Pennsylvania Law School who has not answered to the satisfaction of the faculty all the problems in the course in "Office Practice" assigned to his class. The work of necessity involves considerable machinery, but it has proven itself to be of very great benefit. Speaking of the success of the work, Dean Lewis said:

"It is not in any sense a substitute for the regular course in Practice and Procedure. We do feel, however, that the experience resulting from being made to do a definite amount of legal drafting gives the student, on the one hand, a confidence in himself, while, on the other hand, it impresses him with the necessity of the value of accuracy in all details pertaining to the preparation of legal papers."

The following problems, answered this season by members of the second-year class, give a clear idea of the general nature of the course:

OFFICE PRACTICE.

Problem I.—A Lease.

(Due November 20, 1911.)

You represent Mr. Schuyler M. Nolan, of Philadelphia, who is the owner of premises 1216 Chestnut street, Philadelphia, and is about to rent the first floor of the same to the Job R. Hartley Company, a Pennsylvania corporation, for use as a dry goods store, upon the following terms: Term to be five years, commencing January 1, 1912; rental \$7,500

per annum, payable monthly; tenant to pay all gas, water, and sewer charges; the lease to contain the usual covenants on the part of the tenant against the use of the premises for other purposes than a dry goods store, assignment of term, subletting, acts affecting insurance, and for the good order and condition of premises; if the tenant holds over at the end of the term with the landlord's consent, the lease to be deemed renewed for one year, and so on, from year to year, until either party gives other three months' notice of intention to terminate lease at end of any term; lease to contain usual provisions in case of default by tenant with confession of judgment and waiver of exemption.

1. State any statutory requirements applicable to the case.
2. Prepare the lease.

Problem II.—A Conveyance.

(Due January 3, 1912.)

In the office for the recording of deeds in Philadelphia you will find, in Deed Book W. S. V. No. 1309, p. 158, the record of a deed conveying premises at the southeast corner of 58th and Pine streets, from the Model Building Company to John S. Truitt. For the purposes of this problem and to avoid the use of real names, we will assume that the names of the above-mentioned grantor and grantee are respectively the Modern Baking Company and James S. Thomas.

You represent James L. Grayling, of Philadelphia, who desires to purchase this property from James S. Thomas, on the following terms: Price \$1,000, of which \$200 is to be paid on the execution of the agreement of sale; property to be free of incumbrance, possession to be given at date of settlement, and taxes and similar charges to be apportioned to that date; title to be such as will be insured by any reputable title company; agreement of sale to be performed within 30 days of the date; the \$200 paid on execution of the agreement of sale to be retained by the seller as liquidated damages in the event of default by the purchaser. James S. Thomas is married; his wife's name being Caroline K. Thomas.

1. State the various steps which it will be necessary for you to take to complete the conveyance to Mr. Grayling.
2. Prepare the agreement of sale.
3. Search for conveyances and mortgages of the property from 1890 to date.
4. Prepare the deed.

Problem III.—Bankruptcy Procedure.

(Due February 10, 1912.)

You are retained by Amos Gray, of 1634 North Broad street, Philadelphia, James Larkin, of Narberth, Pa., and Joshua Chambers, of Mt. Holly, N. J., in the following matter:

Your clients are all creditors of David Cross, of 834 North 15th street, Philadelphia, a builder. They sold him lumber from time to time, and he now owes them the following amounts: Gray, \$170.56; Larkin, \$250; Chambers, \$421.97. Cross subsequently became insolvent. While insolvent, on January 6, 1912, he paid one of his creditors, Jacob Tuft, of Trenton, N. J., in full a debt of \$700 for materials furnished; Tuft being a close friend of his. This your clients state was done purposely to pre-

fer Tuft to them, and they wish to put Cross into bankruptcy. Cross's debts amount to about \$18,000. Gray's account against Cross stands as follows:

David Cross.

Dr.

1909.				
June 1.	1000 ft. 1" x 12" N. C. Box..	\$ 25.00		
	7. 80 pcs. 3" x 4"—16' Hem.,			
	1280 ft.....at .37	34.56		
July 26.	550—7" x 24" S. & S. H. Cy-			
	press Shingles.....at .20	11.00		
Oct. 4.	7500 ft. 1" x 6" N. C. Roofers			
at .20	150.00		
				\$320.56

Cr.

1909.				
Aug. 4.	Cash	\$ 50.00		
	Balance	170.56		
				\$220.56

1. State the steps which it will be necessary for you to take to put Cross into bankruptcy and prove Gray's claim.

2. Prepare the creditor's petition, the proof of Gray's claim, and letter of attorney for same.

Problem IV.—Partnership.

(Due March 20, 1912.)

Thomas Jones, Benjamin Ash, Marcus Doolittle, and Stephen Silence tell you they desire to associate themselves in the business of manufacture of cotton cloth, in the city of Philadelphia, the place of manufacture to be 1405 North Front street, and office 200 Willings alley. Thomas Jones is to contribute \$5,000, Benjamin Ash \$5,000, Marcus Doolittle \$10,000, and Stephen Silence \$20,000. Thomas Jones, Benjamin Ash, and Marcus Doolittle are to manage the business. Stephen Silence wishes his liability limited to the money invested by him. They wish the association to continue for five years from July 1, 1912. Stephen Silence wishes to reserve the right to transfer his interest to any one, and Marcus Doolittle wishes the right to withdraw at any time and substitute any one in his place agreeable to Thomas Jones and Benjamin Ash. Each wishes interest at 5 per cent. compound semiannually on his capital and accrued profits, and they wish to share the profits equally.

(1) Draw the agreement.

(2) State your reason for selecting the act which you do select under which to organize the association.

(3) Submit a brief detailing the steps which must be taken under the act to perfect the association and accompany the same with copies of the certificate and notices, if any, which must be filed or published.



Nearly a quarter of a century ago, the late Mr. Justice Miller, of the Supreme Court of the United States, in a public address on the use and value of authorities in the argument and decision of cases, expressed his surprise that no book had yet been written, or none that he had seen, distinctively devoted to the subject on which he was speaking, adding, perhaps by way of explanation of the fact, that "the sources of such a work are not ample and are difficult to come at." If a systematic and comprehensive treatise on the law of judicial precedents was a desideratum at that time, it is much more so

to-day. For the reported decisions have enormously multiplied, and the lawyer's problem now is not merely to find the law, but to weigh and estimate the value of what he discovers. Now, more than ever, he needs a guide through "the lawless science of the law, the countless myriad of precedents." Moreover the rules which govern the subject—if rules they can be called, which rest only in judicial discretion and have no stronger sanction than judicial habit—are intricate and not free from confusion, and have long been in need of clear and discriminating exposition. Also it is true that the very theory of the precedent has been vigorously assailed of late in high quarters, and there are evidences of an insistent demand for greater flexibility in the interpretation of the law and a closer correspondence between the rulings of the courts and what is supposed to be the spirit of the age or the wants and wishes of the people.

Yet conditions remain substantially as they were when Mr. Justice Miller spoke. Some portion of the general subject, but by no means the whole, was covered in the treatise of Ram on "Legal Judgment," an English work which exhibited the industrious labor of a pioneer in this field; but the American edition of that book, which added a small number of American cases and an insufficient discussion of the theories and principles peculiar to the American system of courts, is already more than forty years old. More useful work on the American side was done by Mr. J. C. Wells, in his book on "Res Adjudicata and Stare Decisis," but his treatise was published in 1878, and that portion of it which was devoted to the law of precedents was hardly intended, even then, to be more than a sketch of the subject. Professor Wambaugh's excellent and deservedly popular little treatise on the "Study of Cases" is admirably adapted for use in the class-room, as an outline of the subject for students at law, but makes no pretension to an exhaustive citation of the authorities nor to an extended discussion of the subject in detail. A few articles in the legal magazines are to be found, some of them highly instructive, but they are necessarily specialized and limited in scope. Judge Dillon, in his scholarly commentary on the "Laws and Jurisprudence of England and America," has adverted to some few aspects of the subject, and, as always, has illuminated whatever he has touched. Finally, the general theory of the precedent, in respect to its origin and its employment, has received some notice from such writers on the philosophy of jurisprudence as Austin, Markby, Holland, Pollock, Maine, and Salmond. But still no one has hitherto attempted what the author of these pages has set before him as his task, namely, to write a real and complete treatise on the subject of judicial precedents or the science of case-

law, at once theoretical and practical, and therefore adapted not only for the instruction of the student in what is perhaps the most important part of his legal education—the judging, testing, and employment of the weapons with which he is to fight his forensic battles—but also of substantial value to the practitioner in the preparation of briefs and the argument of causes, furnishing him with a full discussion of the rules which the courts themselves have prescribed for their governance in these matters and an abundant citation of authorities to support his criticisms and contentions.

Agreeably to this plan and purpose, the work has been made to include an extended consideration of the nature and authority of judicial precedents; their place in comparative jurisprudence and in equity; the rules which govern the interpretation of judicial decisions and opinions; the processes of analogical argument and of combining cases; the various and complicated considerations which may affect the force and value of a nonobligatory precedent; the nature of dicta and the method of their detection and the reasons for their want of authority; the general doctrine of stare decisis, with its special applications to cases of constitutional and statutory construction, to those judgments which have become “rules of property” and to “the law of the case”; the authority of precedents as between various courts of the same state and as between the several courts of the federal system; the use of precedents from other states and foreign countries, with the various causes which may affect their rank in the scale of authority, the reasons for approving them or for criticising them, and the underlying principles which induce the courts to follow “the better reason” or the “general current of authority”; the effect of the decisions of the United States courts as authorities in the courts of the states; the great and difficult subject of the cases in which the federal courts are constrained to accept and follow the decisions of the state courts and those in which they hold themselves free to form an independent judgment; and finally, the effect of the reversal or overruling of previous judicial decisions. Also, as among the fundamentals of the subject, it has been necessary to consider (in the first chapter) the rules for the solution of novel questions or cases of first impression, and the proper attitude of the courts in the face of precedents which are challenged as obsolete or as locally inapplicable.

I may venture to dissent from Mr. Justice Miller's statement that “the sources of such a work are not ample,” while I most heartily concur in his opinion that they are “difficult to come at.” It is true that some of the chief rules of the subject have been specifically laid down by the courts, and that such particular decisions are accessible to any

one who understands how to look for and to find the authorities on any given topic. Naturally I have not failed to search out these cases, which may be called “direct” adjudications upon the doctrine of stare decisis or some other branch of the general subject, and I believe I have succeeded in discovering and citing practically all that are of real value or importance. But besides this, it is not too much to say that nearly every reported decision of any of the higher courts in this country and in England contains, either by way of comment or illustration, something instructive or suggestive on some branch or aspect of the law of judicial precedents. These comments and illustrations do not constitute the main subject of the court's opinion, and therefore (properly enough) they seldom if ever find their way into the syllabi and the digests. They are to be “come at” only by a patient thumbing of the reports, page by page, and the careful reading of many opinions. To perform this labor upon all the reported decisions would surpass the limits of human endeavor, since it would involve the examination of more than a million opinions. But without this, it is possible, by diligence and a sufficiently varied research, to gather together a number of examples great enough to serve all the purposes of a practical exposition of the subject, and to supply the reader with pertinent and useful citations. This I have endeavored to accomplish; and whatever may be the measure of success attained, at least I have not spared to bestow upon the task the hard and painstaking labor and close thought which its interesting character and difficult problems demand.

—Henry Campbell Black.

From the Preface of Black on the Law of Judicial Precedents, or the Science of Case Law. (767 pages, 1 volume.) Published April, 1912, in the Hornbook Series.



In May Mr. Everett P. Wheeler, of the New York State Bar, will deliver a brief course of lectures in the Cornell University Law School on the Reform of Procedure. Mr. Wheeler is the chairman of the Committee of the American Bar Association to Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in Litigation, and is also the chairman of the Committee on Procedural Reform of the Bar Association of the City of New York.

A circulating library has been established at Cornell, consisting of a number of books on general jurisprudence, legal history and biography, etc. Students are permitted to draw these for home use. This arrangement has proved so popular, and the benefits derived by students so great, that considerable extensions to the circulating shelves are contemplated.

Through the generosity of an alumnus of the Cornell Law School, William Metcalf, Jr., LL. B. '01, of Pittsburgh, two scholarships have been established in this school, to be known as the Fraser Scholarships, in memory of Alexander Hugh Ross Fraser, late librarian of the College.

By the terms of the gift, these scholarships are to be awarded at the beginning of the senior year to students who have successfully completed the curriculum of the preceding years. The holder of the Boardman Scholarship is not eligible, and no student is eligible whose law course has not been taken entirely in Cornell University. The scholarships are to be awarded to deserving students of superior scholarship who are deemed fitted by character, as evidenced by considerateness, generosity, loyalty, and other qualities of manliness. Interest and participation in undergraduate enterprises are to be deemed proper subjects for consideration.

The professors of law are to submit to the class a list of the seniors deemed eligible by reason of high scholastic standing. The class is then to determine by ballot who upon this list shall receive the scholarships, thus determining the element of character. As far as practicable the awards are to be made to students to whom the amount to be paid will be an aid in enabling them comfortably to complete their college course. The value of the first scholarship is \$100 and that of the second \$50.

These scholarships were awarded for this year to William Blackman Flannery, of Addison, N. Y., and Newman Edward Wait, of Ft. Edward, N. Y.



At the Law School of the University of Missouri, announcement has been made of the resignation of Dean John D. Lawson, which will take effect September 1, 1912. The resignation is of the deanship only, and he will continue his teaching as Professor of Contract and International Law. For some months, Judge Lawson has wanted to be relieved of his administrative duties, in order to give more of his attention to the campaign for legal reform in which he has taken a prominent part, and the change now announced will enable him to accomplish this long cherished desire. Coming to the University as Professor of Law in 1891, Judge Lawson was made Dean in 1903. He has at various times been President of the Missouri Bar Association, editor of the Central Law Journal, and Commissioner from the American Institute of Criminal Law and Criminology to investigate the administration of criminal law in Great Britain. He is now Editor of the American Law Review. Dean Lawson will leave in May to attend the meeting of the International Law Associa-

tion at Paris. Since he became Dean in 1903, the standards for admission to the Law School have been much improved; two years of college work now being required.

Professor E. W. Hinton, who will succeed Judge Lawson as Dean, was born in Boone county, Missouri, in 1868. After spending three years in the College of Arts and Science of the University of Missouri, he entered the School of Law and graduated in law in 1890. He received a second law degree from Columbia University in 1891. Since the latter date he has been engaged in practice in Columbia, Mo. In 1903, he became a member of the faculty of the Law School of the University of Missouri, and his practice has been secondary with him since. At various times, Professor Hinton has given courses in Pleading, Evidence, Practice, Criminal Law, Torts, Persons, Conflicts, and Writs, and has often been the acting Dean in the absence of Dean Lawson. In 1906, he published his cases in Code Pleading, which have been used for class work in many well-known law schools. In 1908, he served as lecturer on Practice at the Law School of the University of Wisconsin, where his suggestions led to the establishment of a practice court similar to that which he had already established at the University of Missouri. In 1910, he was a member of the faculty of the summer session at the Law School of the University of Wisconsin. In the spring of 1911, he established a practice court at the Law School of Chicago University. He will hereafter continue his courses in Pleading, Practice, and Evidence along with his new administrative duties.



The Columbia University School of Law, New York City, has an enrollment of 465 students this season, an increase of 60 over last year, and 107 over the year before. Next season the school will offer new courses of instruction in English Legal History, Mining and Irrigation Law, and Patent Law. The course in English Legal History is to be given by Harold D. Hazeltine, Fellow and Law Lecturer at Emanuel College, Cambridge, England. The course in Mining and Irrigation Law is to be given by H. N. Arnold, A. B., LL. B. The appointment of the instructor for the course in Patent Law has not yet been announced.

With the increased number of electives in the Columbia University Law School, a tendency on the part of students has been noticed to distribute their energies in pursuing to a considerable extent the more ornamental courses at the expense of those courses which are fundamental. Having in mind that the prime object of instruction at Columbia is to give training, rather than mere acquisition or accumulation of information, the faculty is of the opinion that a well-trained lawyer can be turned out after a

three-year course of sound instruction in the fundamental principles of Real Property, Torts, Contracts, and Equity, and that he will be a much better lawyer than if he had attempted to cover a wider field without sound instruction in the more fundamental courses. On the other hand, the faculty recognizes that Columbia is a great University, drawing its students from every part of the world, many going there because they desire, in addition to the other law courses, instruction in special topics. It is for this reason that the curriculum has been gradually expanded by the addition of such subjects as, for example, Admiralty, Patent Law, Mining Law, and others. It is the opinion of the faculty that this double object of fundamental training, coupled with opportunity for study of special topics, will be accomplished by placing the more "ornamental" courses in a separate group, to be designated as "special courses," and to be offered in the second and third years of the course, with the restriction that no student may offer such courses for more than a total of six points credit during the second and third years. The result will be that the student will be bound to offer for his degree in the main the more important and fundamental courses. On the other hand, no student will be denied the privilege of securing instruction in any of the "ornamental" courses in which he may have a legitimate interest.

The following subjects are included in the group of special courses for the year 1912-13:

- | | |
|---------------------------|---|
| 1. Admiralty. | 4. Federal Jurisdiction. |
| 2. Civil Law. | 5. History of European Law. |
| 3. English Legal History. | 6. Mining & Irrigation Law. |
| | 7. Patent Law. |
| | 8. Readings in the Digest of Justinian. |
| | 9. Trial Evidence. |



The University of Michigan Law School has added to its course an optional year leading to the degree of Master of Laws. The Law School at present offers 105 hours of work, which will probably be increased somewhat next year, but only 76 hours are required for graduation.

There remains, therefore, for the average student after graduation a full year of work, which he has been unable to take during the three-year course. This situation has resulted from the great development in all fields of Law and the growth of new phases of Law to such proportions as to justify adding new courses. In recognition of these facts, and the growing desire of students to equip themselves thoroughly to meet the keen competition and exacting conditions of the present day, it was decided to offer this fourth year. Candidates for the Master's

degree are required to take not less than 10 and not more than 12 hours of work a semester. At least 50 per cent. of the work must be work offered in the Department of Law. The remainder of the work may be selected from courses offered in other departments of the University, with the advice and approval of a committee of the Law faculty. In most cases, this work must be in subjects connected directly with problems which face the courts and lawyers to-day. This would naturally include work in Political Science, Political Economy, History, Sociology, and perhaps some other subjects.

The course is open to holders of the degree of LL. B. from the University of Michigan or other approved schools, but only students who have maintained a high standard of scholarship, and who have proved their capacity to benefit by further study, will be admitted to the course. In rare cases, specialization under strict supervision of the faculty will be allowed.

The eighteenth annual Summer Session of the Department of Law of the University of Michigan will begin on Monday, June 24, 1912, and continue for ten weeks. The session will be divided into two periods of five weeks each. The work of the Summer Session is planned so as to offer in any two successive summers all the prescribed courses of the first two years of the work leading to a degree. In addition to these, most of the elective courses will be given every second or third summer in such order as to meet the requirements of those who contemplate taking advantage of the Summer Sessions in working for their law degrees. The fundamental courses in Contracts, Torts, and Pleading are usually offered each summer. Instruction is given for the most part by members of the Faculty of the Department, but a few courses will be given by men of recognized ability from other law schools. This year Professor Ernest B. Conant, of the University of Nebraska, and Professor D. O. McGovney, of Tulane University, will be the only teachers from outside institutions.



The beginning of the academic year brought with it several important changes in the faculty of the College of Law of the University of North Dakota. The resignation of Judge Guy C. H. Corliss, who for many years had been identified with the school, as its first Dean and subsequently as one of its most valued instructors, and the withdrawal of Mr. Skulason, who had been in charge of the Practice Court, made necessary the appointment of an additional professor of law. The college was, fortunately, able to secure for that position the services of Mr. Roger W. Cooley, whose work as a writer and lecturer on legal topics is widely and favorably known. Professor Cooley brought to his work a ripe

experience as a law teacher, derived from his connection with the St. Paul College of Law and his work as a lecturer, and a broad and accurate knowledge of law school needs and methods, the result of his investigations while lecturing at the various law schools of the country.

Within a few weeks after the opening of the school, Dean Andrew A. Bruce, whose excellent work as an administrative officer and teacher has brought the school into the front rank, resigned, to accept the appointment as Associate Justice of the Supreme Court of North Dakota. No appointment has yet been made to fill the vacancy thus caused; but in the meanwhile the President of the University, Frank L. McVey, is Acting Dean.

The faculty of the college, as at present constituted, consists of Prof. Luther E. Birdzell, Prof. Roger W. Cooley, Assistant Professor Charles E. Carpenter, and Mr. H. A. Bronson. Judge Bruce is giving the school the benefit of his services as a special lecturer on Constitutional Law.

Several new courses have been added to the curriculum, and other changes in the general work of the school have been made to bring it into greater harmony with approved methods of law school administration. The total registration this year is 88, and the prospects for a material increase next year are very good. The school will graduate this year its first three-year class, twenty in number.



The Law Association of the University of California, composed of the Law students in the Department of Jurisprudence in Berkeley, held its second annual banquet on March 9th, at the Tait-Zinkand Café, in San Francisco. The banquet was attended by about ninety students and the faculty of the Department. Professor William Carey Jones, head of the Department, acted as toast master. The principal speaker of the evening was Justice Frank M. Angellotti, of the Supreme Court of California. The other speakers were Oscar K. Cushing, of the San Francisco Bar, Percy V. Long, City Attorney of San Francisco, and Wesley W. Kergan, President of the Law Association.

During the past year Allen P. Matthew has been giving a course in the Department of Jurisprudence of the University of California on the provisions of the Interstate Commerce Clause. Mr. Matthew is a graduate of the University of California with the class of 1903. In 1905 he entered the Harvard Law School, and remained there two years. At the end of that time, he entered the service of the Interstate Commerce Commission as private secretary to Commissioner Lane. In June, 1910, he was appointed Attorney and Special Examiner to the Commission. Later he resigned, and is now in the Law Department of the Western Pacific Railway Com-

pany. Mr. Matthew received the degree of Bachelor of Laws from the George Washington University Law School in 1908. His experience with the Commission has enabled him to give a most interesting and valuable course upon this branch of transportation law.

Last October, Mr. Oscar K. Cushing, of the San Francisco Bar, offered a prize of \$100 for the best essay on some subject connected with the procedure of the courts. The subject chosen for the competition was "A Comparative Study of the California and English Systems of Statutory Pleading." The time for receiving essays has just closed, but the winner of the prize has not been announced. The competition was open to the second and third year students of the Stanford Law School, as well as the students of the Department of Jurisprudence in the University of California.



The following poem was written by a young woman member of the first-year class of the John Marshall Law School, Chicago, Ill., after the class had finished the study of Maine's Ancient Law:

Sir Henry Maine.

(As Understood by the John Marshall Law School
Class of 1914.)

If you think you're especially clever
At any particular game,
Like equations, or foreign relations,
Just wait till you've read up on Maine.
First get all editions you know of,
From the Deluge down to Roosevelt's
Third,
Encyclopædias, histories, bibles,
Don't go past an unexplained word.
If you're in touch with the Universe's working,
And get past Maine's index still sane,
You can lift your young eyebrows at highbrows
From Adam to King George's reign.
He's amused at J. Bentham and Locke.
By a glance at the covers, he can
Get the glimmer in the Darwinian Primer,
Entitled the "Descent of Man."
Bryan's wonderful mental capacity,
Shaw's abnormal, omniscient brain,
Hamilton Mable's gracious sagacity,
Sound like "mere dribble" to Maine.
His knowledge of philosophy and Latin,
To say nothing of politics, reform,
Would cause a plain Harvard professor
To succumb to a dizzy brain storm.
Don't air your half-baked eruditions,
In Sir Henry's sensitive ear.
And don't get on themes scientific,
Unless you can weather his sneer.
Munsterberg's sure in Psychology,
Kant and Spencer may wish they could
boast.
But alongside of Sir Henry, they're apologies;
He's got sages all tied to the post.
Socrates, terse and spectacular,
Wise Plato, handed out hot,
Marcus Aurelius, oracular,
Maine indulgently smiles at their rot.
Their eccentric irrationalities
Seem snail like, compared to the pace
Set by the matchless mentality
Evolving from Sir Henry's pate.

R. A. Daly, of Chicago, special lecturer on legal bibliography, has given his course of instruction relating to the use of law books and investigating the authorities in the following law schools this season:

Illinois College of Law, John Marshall Law School, Chicago-Kent Law School, Chicago Law School, Hamilton College of Law, Loyola Law School, Northwestern University, University of Illinois, University of Wisconsin, Marquette University, Drake University, University of Iowa, Creighton University, University of Nebraska, Kansas City Law School, University of Kansas, University of Texas, Tulane University, St. Louis University Institute of Law, Washington University (St. Louis Law School), University of Missouri, University of Indiana, Pittsburg Law School, University of West Virginia, Dickinson School of Law, University of Maryland, National University, Richmond College of Law, University of Virginia, Washington and Lee University, Georgetown University, Fordham University, New York Law School, Yale University, Cornell University, and Western Reserve University.

In addition to the above-mentioned schools, Mr. Daly will meet the senior classes of the Detroit College of Law, the University of Valparaiso, and the St. Paul College of Law before the close of the present season.



Georgetown University lost one of the best known and most efficient members of its Law Faculty in the recent death of Richard J. Watkins, the former Secretary-Treasurer of the Law School. Mr. Watkins died on December 5, 1911, of an affection of the heart induced by nervous breakdown. He had been closely identified with the University throughout his life, having received from Georgetown the degree of Bachelor of Arts in 1897, Bachelor of Laws in 1899, and Master of Laws in 1900. His appointment in 1906 gave universal satisfaction, and his death is keenly felt by a host of friends among the student body and the Alumni of the University. The term of Mr. Watkins' service marked a period of remarkable growth and activity in the Law School, due in large part to his energy and ability. His devotion to Georgetown, his interest and enthusiasm in everything pertaining to the Law School, and his attractive personality were well known in the School and endeared him to every one. At the time of his appointment, there were 290 students in the Law School, the Faculty numbering 31; at the time of Mr. Watkins' death, the Faculty numbered 43, and there were 880 students in the Law School.

Hugh J. Fegan, a former graduate of the Georgetown University Law School, has succeeded Mr. Watkins as Secretary-Treasurer of the Law School.

The successful launching of the Montana State University Law School the past year is due in no small degree to the generosity and public spirit of Mrs. W. W. Dixon, widow of the late Judge W. W. Dixon, in establishing to his memory the W. W. Dixon Memorial Library. This library is composed in part of the private law library of Judge Dixon, in part of the library of the late Colonel T. C. Marshall, and other books purchased with funds to the extent of \$2,000 which Mrs. Dixon liberally donated for the purpose. Mrs. Dixon has expressed her intention of making further donations to this Memorial Library until it shall become one of the most complete and finely-equipped libraries in the whole state. By her far-sighted generosity, Mrs. Dixon has undertaken to render to Montana public service like to that rendered the great universities of California by Mrs. Stanford, Mrs. Hearst, Mrs. Roalt, and Mrs. Sather. As Judge Dixon was a pioneer in the upbuilding of the state, so Mrs. Dixon is a pioneer among the benefactors of Montana's university, and is setting an example to other public-spirited and wealthy citizens whose moral and material support is greatly needed to make this University fulfill its high destiny and reach its full growth and stature.

William Wirt Dixon was born in Brooklyn, New York, on June 3, 1838. While a boy, his family moved to Iowa, where he was admitted to the bar in 1858. He practiced his profession in that state and in Tennessee and Arkansas until the year 1862, when he crossed the plains to California. He soon returned as far east as Nevada, and then he came to Helena, and later to Deer Lodge, Montana. In 1877 he located in the Black Hills, Dakota, and finally in 1881 he removed to Butte, Montana. During all of his peregrinations he continued the practice of his profession. He retired from active business in 1907 because of failing health, and from that date until his death lived for the most of the time in Los Angeles, California, where he died November 13, 1910, in the Seventy-Third year of his age.

In 1874 Judge Dixon was married at Deer Lodge, Montana, to Miss Ida Wilcox, who survives him. Four children blessed this union, three of them dying at an early age, and the fourth, a son, living until he had attained his majority.



University of Southern California School of Law, so far as enrollment is concerned, reports the banner year of its eight years of existence. The enrollment this season numbers 479 students. Of these 250 are Freshmen.

The law school has recently moved to the corner of First and Broadway, Tajo Building, in the city of Los Angeles, occupying the

floor formerly used by the federal courts. By this move the school has acquired something over 7,000 square feet of space, giving large library rooms, ample classrooms, together with studies, smoking rooms, offices, etc.

There have been quite material advances in its library during the last two years. Among its 4,500 volumes of law books are included English Reports, all Federal Reports, a complete set of the National Reporter System, and complete reports of 31 states, furnishing thus a good assortment of books for students' use.

The growth of this school is an index of the development of Southern California and of the University of which this College of Law is a part. It is still keeping to its recognized system of qualifying its students in the practical phases of a lawyer's life. In carrying out this policy it has made some changes in the course of instruction by adding Conveyancing and kindred courses to its curriculum. It also pays special attention to Public Speaking and debate. The School arranged for two joint debates with the Law Department of Northwestern University this year. One debate has already been held in Los Angeles, the second is to be held in Chicago in April. The Law School would like to arrange with some additional Law School for one or more annual debates.

The 20 women attending this Law School are now moving to organize a legal Sorority. So far as known, this is the first instance of a movement among women law students along this line.



At the annual meeting of the Board of Trustees of the Boston University on Monday, January 15, 1912, Homer Albers, A.M., LL.B., of the School of Law, was appointed Dean of that department. His official duties are to begin September 1, 1912. Acting Dean Weed will continue his service in this position during the present academic year.

The action of the Trustees of the University in appointing Homer Albers, A.M., LL.B., Dean of the Law School, has met with most favorable comment on the part of the alumni and the friends of the school. Moreover, the appointment is pleasing both to the Faculty and to the student body of the school. The warmth and enthusiasm of the greeting accorded Mr. Albers upon his first appearance in the lecture-hall after his appointment was proof of the cordial relations that exist between him and the undergraduates.

Mr. Albers brings to the service of the school an active mind, a highly trained intellect, and a broad and generous sympathy. In the very prime of life, he is able to take up the arduous duties of the deanship with abundant physical strength and mental vigor. A man of tireless activity, he is prepared and ready to approach the problems of adminis-

tration with the concentration and enthusiasm that have constantly marked his work in the practice of his profession.

He was born in Warsaw, Ill., on Feb. 28, 1863, the son of Claus and Rebecca (Knoop) Albers. He was graduated from Central Wesleyan College, of Warrenton, Mo., in 1882, with the degree A. B. He then entered Boston University Law School, from which he was graduated with high honors in June, 1885. In the same year he was appointed instructor in the Law School, and since that time he has been continuously connected with the school as instructor or lecturer. His subjects of instruction have been Bills and Notes, Common Law Pleading, Trade-Marks, the Conduct of a Case, and Contracts. For several years he has been lecturer on business law in the Massachusetts Institute of Technology, where, too, he has met with abundant success. In 1885 he was admitted to the Massachusetts bar, and since that time he has been actively engaged in the practice of law. In 1903 he was appointed a justice of the Massachusetts superior court, but for personal reasons he was not able to accept the appointment. From 1899 until 1905 he was a member of the Massachusetts State Ballot Law Commission.



Professor William A. Finch, professor of law, Cornell University, died in Brooklyn, March 31, 1912. For years Professor Finch has been in poor health, and last May he broke down completely. He was granted a leave of absence for one year, and went to the Battle Creek Sanitarium, where he seemed to improve. In December, however, with the advent of cold weather, he became worse, and was advised to go to Florida. His strength failed him when he reached New York, and he remained in Brooklyn until his death.

Professor Finch was born in Newark, N. J., June 8, 1855. He entered Cornell in 1876, and received the degree of A. B. in 1880. He studied law in the office of his kinsman, the late Judge Francis Miles Finch, in Ithaca, and practiced there in association with the late Samuel D. Halliday until 1891, when he was appointed professor of law. He taught chiefly the law of Property.

Professor Finch was a profound student of the law, and especially in real estate law he was an acknowledged authority. He was, in addition, deeply interested in medical science and in mathematics. A lover of the classics, he kept up his classical reading until the end.



The Albany Law School, with the beginning of the school year in September last, inaugurated a three-year course of study with an enlarged curriculum and additional

lectures. The additions to the course were largely by way of increasing the number of lectures on the topics which could not be adequately treated under the two-year limitation. Several topics, however, were added, including a course on Municipal Law by Hon. D. Cady Herrick, a former Justice of the Supreme Court; one on Medical Jurisprudence by Hon. William P. Rudd, one of the Justices of the Supreme Court resident at Albany; and a course on Patent Law and Copyrights by F. W. Cameron, Esq., one of the leading patent lawyers of the state. Also courses on Civil Law, International Law, and Conflict of Laws. Hon. Irving G. Vann, of the Court of Appeals, continues his lectures on Insurance, and Hon. Alden Chester, of the Supreme Court, lectures on the Federal Judicial System. The Dean, J. Newton Fiero, will meet the second and third year classes in Procedure, Evidence, and Equity.

The lecturers adopt the Dwight or Case systems, as they prefer, although most of the work of the school is carried on under a modified form of the lecture system, under which a suggestion of the rule of law is given the student by dictation, with reference to the leading cases which he is expected to read, and in some instances additional work is given from a text-book. This has been the settled policy of the school since 1895, when Dean Fiero took charge.



The 1912 catalogue of the New Jersey Law School has just been issued, and shows a large increase in the enrollment for the current year. In 1908-09 the total enrollment was 71; 1909-10, 108; 1910-11, 185; 1911-12, 193.

Three bar examinations are held in New Jersey during a year, and in the February, 1911, examination there were 11 graduates of the N. J. Law School present, and of these 10 were successful. In June, 1911, the Law School had 7 graduates take the examination, and all were successful; while 9 out of the 10 graduates who took the November bar examination were successful. The average number of those passing the bar examinations who are not law school students in New Jersey is almost never over 50 per cent., and frequently below.

Although the Law School has not yet completed its fourth year of existence, two of its graduates have been elevated to the bench. John J. McGovern, LL. B., 1910, was recently elected Recorder of Hoboken by the largest majority ever given to a candidate for that office, and James A. Butler, LL. B., 1910, is now judge of the First Criminal Court, Jersey City.

Professor Currier, of the New Jersey Law School, will give a course of lectures on Agency at Columbia University, in the City

of New York, during the school year 1912-13, while Professor Burnett has been giving his course on Corporations at the New York University Law School this year.



The following tables will give the American law student an idea of the percentage of candidates failing to pass the final Solicitors' Examination in England for the years 1910 and 1911:

The Final, 1910.

Examination.	No. of Candidates.	Passed.	Failed.	Percentage of Failures (roughly).
January	181	139	42	23
March	105	66	39	37
June	268	196	72	27
October	170	136	34	20
	724	537	187	25%

The Final, 1911.

Examination.	No. of Candidates.	Passed.	Failed.	Percentage of Failures (roughly).
January	150	115	35	23%
March	115	83	32	27%
June	240	182	58	23%
October	156	98	58	37%
	661	478	183	27%



The course leading to the degree of Master of Patent Laws, recently established in the National University School of Law, has proven a great success and has attracted much attention. The Assistant Commissioner of Patents, Mr. Tennant, a graduate of the National University Law School of 1901, and several of the chiefs of divisions of the Patent Office, prepared original lectures upon the technical work of the department, and since January frequent lectures upon individual topics of Patent Law and Practice have been given by such well-known men as Fisher, Dodge, and Walter Rogers, President of the Patent Bar Association.

An interesting feature of the work has been the use of models and drawings as an aid to practical demonstration of leading cases. The Dean of the Patent Law Faculty is Walter F. Rogers, of New York and Washington.

A novel feature introduced in the Law

School this year in the course by Dean Carusi has been the permission to undergraduate students to take additional subjects to those scheduled for the year in which they are enrolled, with the right to take the examinations upon the subjects and receive credit on the amount of work required for the undergraduate degree. This is in recognition of the fact that the capacities of students vary greatly, and that some incentive should be given to men of exceptional capacity to make use of it in shortening the period of the undergraduate work and enabling them to take up the post graduate work, which otherwise they might have to forego.



In order to carry on the quiz work and additional instruction made necessary by the afternoon and early evening classes, three additional instructors have been added to the faculty of the Kansas City College of Law:

Mr. William R. Moore graduated from Odessa College in 1895, later attended the Missouri Valley College at Marshall, Mo., and graduated from the Kansas City School of Law with the degree of LL. B. in 1899, since which time Mr. Moore has been engaged in the active practice in Kansas City, Mo., and has been counsel in many important cases.

Mr. Frank C. Wilkinson is a graduate of the Central High School of Kansas City, and received his A. B. degree at Missouri University and graduated from the Law School of Yale University with the degree of LL. B. in the class of 1911.

Mr. Randolph P. Rogers attended the University of Virginia for three years, and went from there to Yale University, where he graduated with an A. B. degree in 1907, and then took the law course at Yale, receiving the degree of LL. B. with the class of 1909.



The following "Don'ts for Exams" were prepared by a member of the Faculty of the University of Pennsylvania Law School, who, it is said, suffered from an acute attack of nightmare after correcting the papers on Pleading handed in by the members of his second year class at a recent examination:

1. Don't repeat the question. The professor knows it. What he wants is the answer.

2. Don't write a complete history of the subject. Save that for your future text-book, and confine your energies to the solution of the problem before you.

3. Don't give an answer without stating your reasons in full. You are not guessing the number of beans in a bottle.

4. Don't depend on inferences and implications in your answers. The professor is frequently a man of only ordinary intelligence and not a clairvoyant. You may be cruelly misunderstood.

5. Don't state that the question is not covered in the course. It is a sad commentary on your method of taking notes.

6. Don't think that quantity is ever a substitute for quality in your answer.

7. Don't write illegibly. Great men frequently write badly, but you are not a great man yet.

8. Don't leave a problem without reading your answer over for mistakes. You may be surprised at your own fatuousness.

9. Don't, on coming out of the examination, have a fit because your answers differ from those of the other fellows. You may be the only one right. Anyhow, a post mortem does not resuscitate the corpse.

10. Don't be peevish because the man who cheated gets honors. He will be caught some day robbing a hen roost.



The enrollment of new students in the Washington College of Law, Washington, D. C., for the present year, has increased 100 per cent. over that of the previous year. The Dean, Mrs. Ellen Spencer Mussey, announces that, beginning with the next scholastic year, the freshman class will be divided so that every student will receive personal attention from the professor in charge, and arrangements have been made for additional lecture rooms.

The debating society of the freshman class has been in session twice a month all through the year, and has also formed a Congress to meet on alternate weeks. The bill to tax bachelors \$100 per annum was the cause of a spirited debate and much amusement.

The new course in Patent Law and Practice before the U. S. Patent Office, under the charge of Mr. C. C. Billings, First Assistant Commissioner of Patents, has been very successful, and the first class to graduate consists of nine men and two women.

The post graduate course, under the charge of Prof. Paca Oberlin, assisted by Prof. R. J. C. Dorsey, Prof. J. N. Baker, Prof. Walter S. Penfield, and Prof. R. A. Maurer, has been supplemented by valuable lectures on Interstate Commerce Law by Judge Martin Knapp, Presiding Judge of the Commerce Court. Mr. Justice Barnard has lectured on Legal Ethics; Mr. Edwin Brandenburg, author of Law of Bankruptcy, has given a course on Bankruptcy; and Prof. George Kearney, of Department of Justice, has given a practical course on Legal Bibliography and Preparation of Cases.

Mr. Justice Anderson is to give a course of lectures on the Jurisdiction of the Federal Courts.

The commencement exercises are set for Monday, May 27th, at Memorial Continental Hall.



The Creighton College of Law has just closed a contract for the purchase of the complete English Reports from the beginning

down to date, Mew's Digest, Halsbury's Laws of England, British Ruling Cases, English Ruling Cases, the complete official reports of all the American Courts of Last Resort, down to the Reporter System, Extra Annotated Editions of American Decisions, American Reports, and the current issue of American State Reports, the official reports of the Supreme Court of the United States, Cyc. and over 200 additional text-books. This, in addition to the books already owned by the school, will give it a very complete working library, valued at about \$20,000.

Dean Paul L. Martin has been appointed Chairman of the Committee on Legal Education of the Nebraska State Bar Association.

Negotiations are pending for the purchase by the school of the courtroom equipment now used in the Douglas county courthouse, which equipment is to be superseded by a new outfit when the new courthouse, now nearly complete, is put into use. The school makes its practical instruction an important part of the curriculum, requiring attendance of all the students at all the sessions, and this additional equipment, valued as it is at about \$5,000, will materially contribute to the success of the court work.

Professor John A. Bennewitz, who accompanied the debating team which met Loyola University on the suffrage question in Chicago on the evening of March 14th, visited some of the Chicago law schools and met a number of men engaged in legal instruction there.

Professor Louis J. Te Poel, who was retained by the city of Omaha to revise, compile, and edit a new edition of the City Ordinances, has nearly completed his task.



Charles A. Niman, Professor of the Law of Pleading at the Law School of Western Reserve University, has been appointed by Governor Harmon as Judge of the Circuit Court of the Eighth Circuit, to fill the vacancy caused by the resignation of Judge Frederick A. Henry, who is also a professor at Western Reserve Law School. Professor Niman will still continue to teach his course in Pleading.

Austin V. Cannon, A. B., has been appointed Lecturer on the Law of Bankruptcy, to fill the vacancy caused by the resignation of Mr. Harold Remington, who has given lectures on Bankruptcy at this law school since 1903.

Cyrus Locher, A. M., LL. B., has been appointed Instructor of the Law of Mortgages.

The work done by the members of the freshman class, which is the first class since the Western Reserve University Law School has been placed upon a graduate basis, has satisfied the faculty of the wisdom of re-

quiring college training from those who are to enter upon the study of law in a university using the case system.



William Hoynes, Dean of the University of Notre Dame Law School, has recently returned from Rome, Italy, where he was called early in the year on business affecting property interests of the University of Notre Dame. It required some three weeks for Col. Hoynes to adjust the matter, and while working to that end he was greatly surprised at being notified that the title of Knight of St. Gregory had been conferred on him by Pope Pius X. Some of his American friends among the bishops and hierarchy had privately petitioned the Pope to confer that title on him on account of his Civil War record and notable services successively as editor, lawyer, and professor of law. He has served for twenty-eight years as Dean of the Law Department in the University of Notre Dame, meantime practicing at the bar in Chicago and elsewhere. The title of knighthood is one of conspicuous honor, conferred on persons of high character and blameless lives, who have become distinguished for works of philanthropy, services in science and literature, and proved loyalty to country and law in the military line.

On account of the number of recitations and the congestion of available space in the law lecture room and library, it has become necessary to provide an additional lecture room for the use of the law students at the University of Notre Dame. It was selected some time ago, and is in the new building, Walsh Hall. This is located just south of Sorin Hall, and occupied in large part by the students of the senior class and the chief lecture and recitation rooms and library. Thus needed space has been supplied for the present and the construction of a new law building deferred for a time.



Work has been begun on the new law building at the University of Nebraska, and it is hoped that the building will be ready for use before the 1st of next January. The building is to cost \$85,000, exclusive of the furnishings. It is to be of vitrified brick and Bedford stone; the dimensions being 61 by 136 feet, three stories and basement. The entire upper floor is to be the library, with no side windows, but lighted entirely by five large skylights. On the second floor are the second and third year classrooms, a small classroom, a model courtroom, with clerk's office and jury room adjoining, and six faculty offices. On the first floor is a large lecture room, to be used by the first-year class, two small rooms, a seminar room, and two offices. In the basement is a large locker

room and the toilet rooms. The building is to be fireproof throughout; all the floors being cement or composition, and the stairs of steel.



The University of Pittsburg celebrated its 125th anniversary this year. The University of Pittsburg has had several changes of name during its existence, while the Law School of the University, now seventeen years old, has always been known as the Pittsburg Law School. The enrollment in the Pittsburg Law School has steadily increased for several years past, having enrolled this season 170 students, of whom 101 are college graduates. Shiras Chapter of Phi Delta Phi Legal Fraternity is in a flourishing condition, and together with the Chancery Law Club, a similar organization, has had frequent debates and moot court proceedings. All of the 16 members of the faculty have been actively engaged in instruction in the law school during the year.



It was the custom of the late Chief Justice Fuller, of the United States Supreme Court, to read himself to sleep nearly every night. He took a book, went to bed early, and read until he slept, whether that was 9 o'clock in the evening or 3 in the morning.

Nor was he particular about the books.

Novels, history, criticism, philosophy, essays—all were one with him; but, as much as anything, he liked detective stories. The late Senator A. H. Platt, of Connecticut, was a great reader of detective stories, too, as are other men whose minds are working actively many hours a day on great problems.

The Senator and Chief Justice met at a dinner one night. "I understand," said the Chief Justice gravely to Senator Platt, "that you read detective stories."

"I do," replied Senator Platt, with equal gravity.

"Tell me," continued the Chief Justice, "which do you prefer, the 5-cent kind or the 10-cent kind?"

"Well," said the Senator, after mature deliberation, "I think I prefer the 5-cent kind."

"So do I," assented the Chief Justice; "you get quicker action in those."

And, this point having been settled, they took up a certain phase of the Constitution.



The Richmond College of Law, Richmond, Va., has an enrollment of 65 students this year. The school offers a two-year course leading to the LL. B. degree. It is probable that the course will be extended to three years as soon as the school is moved to the new site of Richmond College, which is locat-

ed just outside of the city limits, upon which the college buildings are now in course of erection. The College of Law is equipped with a good working library, which includes the American Digest System, National Reporter System, Cyc., and other leading law publications. The faculty is composed of five members: W. S. McNeill, C. B. Garnett, E. M. Long, J. Randolph Tucker, and John Garland Pollard, all practicing attorneys in Richmond.



The following contribution was received for publication from the Lebanon Law School, Lebanon, Tenn.:

The Law Has Eyes.

Jamison and May were law students.

They got into a dispute one day as to whether the law had eyes.

May said the law is blind; the synonyms of justice, blind.

Jamison said the law has eyes, else how could it discriminate between right and wrong?

The contention lasted several days.

Finally, Jamison found a passage in Blackstone where it was said the law winked at certain offenses. "How," said he, "can the law wink, unless it has eyes?"

May gave it up, agreeing to bow to the authority of the great commentator.



Many years ago a section of a celebrated class at Harvard was regaling itself in a Boston restaurant. The talk fell on feats of eating and drinking, and one member of the class, since become a very staid and very well-known statesman, offered to bet five dollars he could drink a bottle of tabasco sauce. There was some discussion over this, many holding the feat could not be done; but the wager was finally made. The man who bet took a bottle of tabasco sauce, put it into a salad dressing he concocted, and got away with it. The others present were much impressed.

Later, this same man offered to bet ten dollars he could drink a bottle of champagne without taking the bottle from his lips, which is a difficult feat, but can be done. Anyhow, he did it, to the great amazement and admiration of his classmates, and with the addition of ten dollars to his supply of money.

"Now," said the man who had won both bets, "just to show you people how good I am, I'll bet you twenty-five dollars I can eat those lace curtains."

And nobody had the nerve to take him up. They thought he could.



Roger F. Little, a graduate of the academic and law departments of the University of Illinois, who for the past two years has been

engaged in practice at Urbana, Ill., was made instructor in the College of Law of the University of Illinois at the beginning of the present semester. His teaching will be confined to the courses in Procedure.

Professor Chester G. Vernier, of the Law Department of the University of Illinois, has been made secretary of the Illinois Society of the American Institute of Criminal Law and Criminology to succeed W. G. Hale, who has resigned his position as professor of law at the University of Illinois and entered the practice at Portland, Or.



C. H. Huberich and W. N. Hohfeld, members of the faculty of the Stanford University Law School, who have been absent on sabbatic leave during the past year, will return and take up their work in the law school next September. Professor Huberich has been working in Berlin throughout the year. Professor Hohfeld spent part of the year at the University of Chicago Law School, where he gave a course in Evidence.

Professor C. A. Huston has been granted sabbatic leave of absence for next year.

Associate Professor J. W. Bingham has been advanced to the rank of full professor. Professor Bingham received the degrees of A. B. and J. D. from the University of Chicago, and has been a member of the Stanford faculty for five years. His special subject is Property Law, and he has recently given a good deal of attention to Mining and Water Law, which are of particular importance on the Pacific Coast.



The University of Texas Law School has an enrollment of 304 students this year. Of this number 147 are juniors, 61 second-year men, and 63 seniors.

The entrance requirements into the law department are now fixed at the fourteen units required for admission into the academic department and five full college courses in such department, or the equivalent thereof. The requirements for graduation from the law department are three years' study of the law, credit in law topics representing 1,080 hours of classroom work, and two and one-third courses in the academic department, in addition to the entrance requirements.



During the Christmas Holidays, the St. Louis University Institute of Law moved to its newly completed quarters on Lindell Boulevard. The new building is splendidly equipped. It consists of an extensive addition built to a large, substantial residence. The

residence, for the present, serves as part of the school, but will later be torn down, and a front in harmony with the other adjoining university buildings, erected. The Registrar's office, the Dean's and Regent's rooms, two faculty rooms, a reading room, and smoking apartment comprise the residence itself. An immense auditorium, having a seating capacity of about 1,200 people, occupies the first floor of the new building proper. Above this are four large, commodious, well-lighted classrooms and a spacious library, which also serves as an Assembly Hall and Practice Court. In point of properties, the Institute to-day is one of the best-equipped law schools in the country.

O'Neill Ryan, Dean of the Law Institute, was taken ill during the past month and had to undergo a serious operation. However, he is recovering nicely, and will soon be able to resume his practice.



A vacancy has been created in the faculty of the Washburn Law School, Topeka, Kan., by the resignation of Shelby L. Large, who returned to the general practice of law.

The Washburn Law School moved into new quarters at the beginning of the school year. The new rooms are much larger and more convenient. The school was very badly in need of more space, as the enrollment for the present term is more than three times as large as it was three years ago. In order to be near the State Law Library and in touch with the court session, the school is located in the business section of the town, instead of on the college campus.

A national chapter of the Alpha Kappa Phi legal fraternity was installed in the Washburn Law School March 16, 1912.

Edward D. Osborn of the Washburn Law School, spent the month of January at the Isthmus of Panama. Mr. Osborn was compelled to take a month's rest on account of trouble with his eyes.



During the past winter the students of the John Marshall Law School have been favored with lectures by three prominent men outside the faculty.

Hon. W. L. Jones, United States Senator from Washington, lectured on Initiative, Referendum, and Recall.

Professor Andrew C. McLaughlin, of the University of Chicago, lectured on the "Origin of the Power of Courts to Declare Laws Unconstitutional."

Professor Albert Bushnell Hart, of Harvard University, lectured on "Centralization of Power. Is the Federal or the State Government Better Fitted to Meet Our Newer Political Problems?"

Robert C. Alston, general counsel for the Southern Express Company, a graduate of the Atlanta Law School, has offered a prize of \$25, either in money or in a medal, to be competed for by the members of the senior class of the Atlanta Law School for the best thesis on some subject connected with Interstate Commerce. Mr. Alston named as the subject the following: "Article 1, section 8, clause 3, U. S. Constitution. Discuss the historical facts which led up to the adoption of the commerce clause of the federal Constitution. Discuss the case of *Gibbons v. Ogden*, 9 Wheat. 1, and state the doctrines of that case, speaking of its influence on this clause of the Constitution."

The faculty of the Atlanta Law School have offered two gold medals, to be competed for by the members of the junior and senior classes, for the best orations.



The following figures show the total membership of the different legal fraternities in the law schools for the years 1909 and 1910; also the date when each fraternity was founded:

Name	1909	1910	Founded
Phi Delta Phi.....	8,950	9,600	1889
Delta Chi	3,110	3,184	1890
Phi Alpha Delta.....	1,600	2,862	1898
Theta Lambda Phi	1,500	1,600	1901
Alpha Kappa Phi.....	750	2,705	1902
Gamma Eta Gamma.....	600	600	1901
Sigma Nu Phi.....	245	245	1902
Total	16,755	17,746	



Several new members have been added to the faculty of the Suffolk School of Law, Boston, Mass. Wilnot R. Evans, Jr., LL. B., Walter R. Meins, LL. M., and George Blaney, LL. B., have been appointed to the faculty of the day department. Wayland F. Dorothy, LL. B., Philip Mansfield, LL. B., and Leon R. Eyges, Esq., all Boston lawyers, have been added to the faculty of the evening department. The school year now closing has been one of the most successful years of the school's history.



The attendance in the Benton College of Law during the session of 1911-12 numbered 220, of which number 60 students are pre-legal students. The seventeenth session of the College will open on September 16, 1912. Thirty-five students will be graduated from the Benton College of Law on Thursday, June 6, 1912. Hon. Henry S. Caulfield, Judge of the St. Louis Court of Appeals, will deliver the Annual Address to the graduates. Ex-Lieut. Governor Charles P. Johnson will confer the degrees.

Following is a record of the enrollment of students in the Washington and Lee University School of Law, Lexington, Va., during the past five years:

1907-08	84	students
1908-09	117	"
1909-10	157	"
1910-11	176	"
1911-12	206	"



Announcement has been made that beginning next fall the University of Tennessee Law School, Knoxville, Tenn., will give a full three-year course of instruction, leading to the degree of LL. B. Thus, after ten years of striving for higher standards and more efficient instruction in the University of Tennessee Law School, Judge Ingersoll, the well-known Dean of that institution, is soon to see the consummation of his plans.



The Illinois College of Law, Chicago, which for the past 15 years has been conducted as an independent law school, has affiliated with De Paul University and moved to the university buildings, corner of Webster and Sheffield avenues, Chicago.

The Law College will hereafter be known as the Illinois College of Law, Law Department of De Paul University.



The new rules for admission to the bar in New York require, in addition to a longer period of study, that the moral character of the applicant be sworn to by two attorneys who are known to at least one member of the Character Committee of the Bar Association, and that the affidavit state specifically the details of such knowledge of the candidate.



The Department of Law of the George Washington University announces a course in Constitutional Law for next year to be given by Everett Fraser. This topic has been heretofore taught in the Political Science Department of the University, but will hereafter be given in the law school and by a member of the law faculty.

The faculty has also voted to restore the degree of Master of Patent Law, requiring therefor a full year of post graduate work, which must include the courses in Patent Law and Federal Procedure.



The University of Idaho College of Law located at Moscow, will in June graduate its first senior class. In the University of

Idaho Law School special attention is given to moot court work and the practical side of a lawyer's training. Nearly all of the members of the senior class have already arranged for desirable locations in which to begin practice.

◆ ◆ ◆

Judge Calvin U. Gantenbein, Dean of the University of Oregon Law School, is a candidate for Congress. Walter H. Evans, Professor of Law in the University of Oregon, is a candidate for district attorney in Portland, Or.

◆ ◆ ◆

A bright young attorney, rather given to a strenuous oratory, was employed to defend a man charged with aggravated assault and battery. The defendant had been called an Irish liar, and had resented the insult by seriously injuring the insulter. The attorney, in addressing the jury, first discussed the defense generally, but, warming to his subject, addressed a German juror as follows: "Mr. Herman, if a man should call you a German liar, wouldn't you try to break his face?" To a Jew juror: "Mr. Einstein, if a man should call you a Sheeney liar, would you not strike him with any weapon at hand?" To an Irish juror: "Mr. McGinty, if a man should call you an Irish liar, wouldn't you try to kill him?" Then, carried away by his own eloquence, he addressed the remaining nine jurors of uncertain nationality: "And you other members of the jury, if a man should call you the various kinds of liars that you are, wouldn't you slay him if you could?" The jury stood nine to three for conviction.—
Law Notes.

◆ ◆ ◆

"You might think," said Joseph H. Choate, at a banquet in New York City, "by the way some people talk, that the American lawyer couldn't be honest if he wanted to. You would think he worked in such muddy waters that—well, you might think the American lawyer was in Breef's case. Breef, you know, was accused of bribery. He admitted the charge.

"What, sir?" the judge thundered. "What, you, a practicing lawyer, admit without shame that you bribed the witness?"

"Yes, your honor," said Breef, hastily. "But I bribed him to tell the truth. He had been bribed by the other side to lie."

◆ ◆ ◆

When charged with being drunk and disorderly, and asked what he had to say for himself, the prisoner gazed pensively at the magistrate, smoothed down a remnant of gray hair, and said:

"Your honor, man's inhumanity to man makes countless thousands mourn. I'm not

as debased as Swift, as profligate as Byron, as dissipated as Poe, as debauched as—"

"That will do!" thundered the magistrate. "Ten days! And, officer, take a list of those names and run 'em in. They're as bad a lot as he is!"—London Mail.

◆ ◆ ◆

Brougham and Scarlett were councillors in an English circuit court where a North countryman was a member of a jury which gave all its verdicts in favor of Scarlett. Some one present in court asked this jurymen what he thought of the two advocates. "Well," he said, "Brougham is a wonderful man, a great talker. He can talk, but Scarlett don't amount to much."

"Why, you gave him a verdict every time."

"Oh, of course. He was on the right side, you know. Scarlett gets all the easy cases."

◆ ◆ ◆

A remarkably brief and effective summing up was once quoted by Lord James in an after dinner speech. It was delivered by an Irish judge trying a man for pig stealing. The evidence of his guilt was conclusive, but the prisoner insisted on calling a number of witnesses, who testified most emphatically to his general good character. After hearing their evidence and the speeches of counsel, the judge remarked: "Gentlemen of the jury, I think that the only conclusion you can arrive at is that the pig was stolen by the prisoner, and that he is the most amiable man in the county."

◆ ◆ ◆

When a leading citizen of a New Hampshire town returned thither after a prolonged sojourn abroad, he made a tour of the place to find out how all his old friends were "getting along."

At one establishment he found a youth, the son of an old friend of his, whose father was still paying his office rent.

"Practicing law now, Jim?" asked the returned one genially.

"No, sir," replied the youth frankly; "I appear to be, but I am really practicing economy."

◆ ◆ ◆

Finnegan had just been elected as County Tax Auditor. Soon after he sent his friend Dooley a notice that there was due the county \$8.00 taxes on his goat. Dooley forthwith presented himself, his Irish up, and said:

"Finnegan, what does this mean? I've owned that durn goat for three years and never paid tax on it, and sure I'm satisfied there's no law for it."

"Indade there is," says Finnegan. "I've read the tax laws, and it provides that all

property abutting and abounding on the public highway shall be taxed at the rate of \$2.00 per foot, and, sure, yez can't deny that your goat has four feet."

♦ ♦ ♦

It was back in the days when portraits in oil were the fad, says the Green Bag, and Lawyer Simpson, the town's Daniel Webster, had his painted in his favorite and characteristic attitude, standing with one hand in his trousers' pocket. His friends and clients remarked upon its wonderful likeness. Finally an old farmer dissented. "Taint like Simpson. No, 'taint!"

"Taint like? Just show wherein 'taint like," said another.

"Taint like," repeated the man, shaking his head. "Simpson's got his hand in his own pocket. 'Twould be more natural if he hed it in somebody's else."

♦ ♦ ♦

The lawyer had a somewhat difficult witness, and finally asked if he was acquainted with any of the men on the jury.

"Yes, sir," replied the witness, "more than half of them."

"Are you willing to swear that you know more than half of them?" demanded the lawyer.

"Why, if it comes to that, I'm willing to swear that I know more than all of them put together."

♦ ♦ ♦

A West Virginia dorky, a blacksmith, recently announced a change in his business as follows: "Notice—De copardnership hereto-

fore resisting between me and Mose Skinner is hereby resolved. Dem what owe de firm will settle wid me, and dem what de firm owes will settle wid Mose."—The Bar.

♦ ♦ ♦

"You say you were in a saloon at the time the alleged assault took place?" a lawyer inquired of a witness at the central station the other day.

"Yes, sir, I was," the witness admitted.

"H'm," the lawyer pursued, "that is interesting. And did you take cognizance of the barkeeper at the time?"

"I don't know what he called it, sir," came the reply, with perfect ease, "but I took what the rest did."—Philadelphia Times.

♦ ♦ ♦

Judge: "Prisoner, have you anything further to add to your defense?"

Prisoner: "All that I ask you to consider, my lord, is the extreme youth of my counsel."

♦ ♦ ♦

Prisoner at the Bar—"Now, I ask you, gents of the jury, if I'd got away with all that swag, like they say I did, d'yer s'pose I'd have hired this little \$15.00 lawyer ter defend me?"—Baltimore News.

♦ ♦ ♦

Speaker (warming to his subject)—"What we want is men with convictions, and where shall we find them?"

Voice—"In jail, guv'nor!"

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No. 4

Meeting of the Association of American Law Schools—1912

THE twelfth annual meeting of the Association of American Law Schools convened at Milwaukee, Wis., on Monday and Tuesday, August 26 and 27, 1912. After the meeting was called to order by the President, Roscoe Pound, of the Harvard University Law School, the roll of the schools belonging to the Association was called. The roll disclosed the following representatives in attendance:

Columbia University Law School: Francis M. Burdick, Harlan F. Stone, Charles Thaddeus Terry.

Denver University Law School: Hugh McLean.

George Washington University Department of Law: H. C. Jones, Merton L. Ferson.

Harvard University Law School: Samuel Williston, Roscoe Pound.

Indiana University School of Law: Charles M. Hepburn.

Northwestern University School of Law: Henry Schofield, Albert M. Kales, F. B. Crossley, George P. Costigan, Jr.

Ohio State University: William B. Cockley.

Pittsburg Law School: William S. Moorehead, A. M. Thompson.

St. Louis Law School: William S. Curtis.

State University of Iowa College of Law: Barry Gilbert, H. C. Horrack.

Syracuse University Law School: James B. Brooks.

Tulane University Law School: D. O. McGovney, William O. Hart (special representative), E. J. Northrup.

University of Kansas School of Law: Charles W. Smith, William E. Higgins.

University of Chicago Law School: James Parker Hall, W. W. Cook.

University of Colorado School of Law: John D. Fleming.

University of Illinois Law School:
Oliver A. Harker, Frederick Green,
William G. Hale, E. H. Decker.

University of Michigan Department
of Law: Edward C. Goddard, H. M.
Bates, Victor H. Lane.

University of Minnesota College of
Law: James Paige, E. S. Thurston, W.
R. Vance.

University of Missouri School of
Law: E. W. Hinton, James B. Mc-
Baine, M. O. Hudson.

University of Nebraska College of
Law: E. B. Conant, W. G. Hastings.

University of North Dakota College
of Law: Roger W. Cooley, H. A. Bron-
son, R. L. Henry, Jr.

University of Pennsylvania Law
School: William Draper Lewis, R. J.
Baker, Roland C. Heisler, Harry Sha-
piro.

Cincinnati Law School: W. P. Rog-
ers.

University of Southern California
College of Law: Frank M. Porter.

University of Wisconsin Law School:
E. A. Gilmore, E. G. Lorenzen, E. R.
James, John B. Sanborn, H. S. Rich-
ards.

Washburn College of Law: J. G.
Slonecker.

Western Reserve University Law
School: Walter T. Dunmore.

Yale University Law School: Sim-
eon E. Baldwin, Henry Wade Rogers.

All schools belonging to the Associa-
tion were represented at the meetings,
excepting Cornell University College of
Law, Creighton University College of
Law, Drake University Law School,
Stanford University Law School, Trini-
ty College, University of South Dakota
Law School, and the University of
Texas.

The following papers were read:

PRESIDENT'S ADDRESS

Taught Law

By *ROSCOE POUND*
Professor of Law, Harvard University

A recent German writer tells us that the public is dissatisfied with the jurist and that the jurist is dissatisfied with himself. No doubt some part of the general dissatisfaction with the jurist is undeserved. The world over, law is in a condition of transition. The change of base from the individualist idea of justice of the eighteenth and nineteenth centuries to the idea of social justice must needs be accompanied by much straining of legal systems, and must needs bring about much crude groping for the principles by means of which the idea of social justice may be realized. Moreover, public dissatisfaction with the jurist is to some extent perennial and must be referred in part to causes inherent in the administration of justice according to law.

Conceding this, the public has none the less a good case against the American teacher of law. While the rest of the world is imbued with faith in the efficacy of effort, and while, under the stimulus of that faith, advance and achievement are the order of the day in every other field of learning, it is too true that the legal scholar is imbued chiefly with threshing over old straw. It is too true in this country that, under the influence of ideas derived from purely historical study, he is sceptical as to the outcome of conscious lawmaking, he doubts the possibility of deliberate direction of legal development, and hence he leaves it to laymen, whose crude, if well-meant, efforts are unhappily too justly subject to criticism, if not even to ridicule, to wrestle as best they may with the legal problems involved in social progress. It is probably not true, on the whole, that our jurists—and by this I mean our teachers of law, who at least ought to be our jurists—are dissatisfied with themselves. But I submit they should be so dissatisfied and that it will be a healthy symptom when such dissatisfaction becomes acute.

Three defects in our law, as it is taught, as it is laid down by our courts, and as it exists as a body of professional tradition, are conspicuous and of grave import. Briefly stated they are:

1. The lack of any real system of law. Our law is rather a congeries of subjects worked out independently in detail than a true system.

2. The sharp line between the traditional and the imperative elements in our law, and the resulting attitude of teacher and text-writer, court and practitioner, toward legislation.

3. The attitude of the law as a whole, still

in large part accepted by lawyer and by judge, and handed down by the teacher, toward the policy of modern lawmaking and the relation of law to social progress.

Of the three, the first presents the problem of greatest juristic interest; the second and third, problems of greater social and political interest. As I shall attempt to show presently, the practical working of our law is seriously affected by want of any thoroughgoing system. The deficiencies in the form of our law are of very much more than theoretical importance; they are much more than obstacles in the way of student and teacher; they work injury to the administration of justice and to public respect for law. But the second and third of the defects above enumerated produce even graver consequences. It is not too much to say that they are bringing about an acute conflict between the law as it is taught and received and administered, and those who are working for social progress. So long as those who are best qualified to study these defects of our received legal tradition neglect to do so, and leave the adjustment of the law to social justice for extra-legal agencies, this conflict will not only injure the effectiveness of the law, but will threaten, if not overturn, many of the great juristic achievements of the past. Indeed, it must be apparent that the doctrine of supremacy of law, which is to be put among the two or three cardinal points of the common-law faith, is now in great jeopardy because of this conflict and of the conventional juristic attitude with respect thereto.

Let us note the true nature of this conflict, the fundamental difference which it involves. It is not in the least due to the dominance of sinister interests over courts, or bar, or jurists. It is not due, the legal muckraker notwithstanding, to bad men in judicial office, or to intentional enemies to society in high places at the bar. It is not a conflict between good men and bad. Instead, it is an intellectual conflict. It is a war of ideas, not of men; a clash between old ideas and new ideas; a contest between the conceptions of our traditional law and modern juristic conceptions, born of a new movement in all the social sciences. Such a conflict the teacher of law ought not to ignore, and cannot ignore, for it has its roots in the legal tradition which he teaches, and thereby perpetuates, and our chief hope for deliverance is a clear recognition of the fundamental issues by those who teach, and thereby mold the tradition, and a conscious and intelligent effort upon their part to divert that tradition to the path of progress.

In one sense, the vitality and tenacity of the common law in the world of to-day is a point of pride. Something more than obstinacy and prejudice on the part of jurists and hide-bound conservatism on the part of lawyers must be invoked to explain the per-

sistence with which this mode of legal and juristic thinking succeeds everywhere in molding rules, whatever their origin, into accord with its principles, and in maintaining those principles in the face of formidable attempts to overthrow or to supersede them. A reactionary profession, zealously guarding a received tradition, might fight a slow retreat. But the fact is that the common law is by no means retreating. In the United States it survives the huge mass of legislation that is placed annually upon our statute books, and goes far to give it form and consistency. It has imposed itself upon a French code in Louisiana, and is fast doing the like in Quebec. It has all but overcome a received Roman law in Scotland, so that Scottish authorities are now conceding that their law is Roman only in terminology. In South Africa, the established Roman-Dutch law is giving way before it no less clearly; the Roman terminology remaining, but common-law modes of reasoning steadily gaining ground. There are many signs in the Philippines and in Porto Rico that common-law administration of a Roman code will result in a system Anglo-American in substance, if Roman-Spanish in its terms.

The American development of the common-law doctrine of supremacy of law in our judicial power over unconstitutional legislation, however unpopular at home, is commending itself to other peoples who have adopted written federal constitutions. Not only do we meet with judicial discussions of constitutional problems, fortified by citation of American authorities, in the reports of South American republics, but the Australian bench and bar, notwithstanding a decision of a Judicial Committee of the Privy Council in England to the contrary, are insisting upon the authority of Australian courts to pass upon the constitutionality of statutes. Moreover, if in the eighteenth century, while the absorption of the law merchant was in progress, Anglo-American law received indirectly not a little of the civil law, through the Continental treatises on commercial law, which exercised so wide an influence at that time, we were well avenged in the nineteenth century. In the more recent development of the subject, the law evoked in the English courts has played a leading part, and Continental jurists do not hesitate to admit that in this way English law has been received into their legal systems. This sort of toughness in our legal tradition is something of which we may well be proud. But it is not in this sense that taught law, to use Maitland's well-known phrase, is tough law. The toughness of the traditional law which results from teaching is of quite another sort. That toughness is not a point of pride to the teacher, nor a source of strength to the law. Let us look for a moment at the distinction.

Why is it that, wherever the common law

comes into competition with its great rival in the practical administration of justice in the modern world, it always prevails? Why is it that the only point at which the common law has met with defeat was in the contest of French law, English law, and German law in the framing of the new codes for Japan? Why is it that French and German jurists are studying English administration of justice so critically in the endeavor to socialize their law, at the very time that the common law is denounced at home as an anti-social institution? Perhaps in part we must answer the first question by admitting that in each case English-speaking judges, who would not read authorities in a foreign tongue, or an English-speaking court of review, trained in common-law modes of thought have played a large part. But this is only a part. The decisive point is that the strength of the common law lies in its treatment of concrete controversies, as the strength of the civil law lies in its logical development of abstract conceptions. In consequence, wherever the administration of justice falls mediately or immediately into the hands of common-law judges, their habit of applying to the cause in hand the judicial experience of the past, rather than attempting to fit the cause into its exact logical pigeon hole in the abstract system, gradually undermines the competing body of law and insures a gradual, but persistent, invasion of the common law.

So, also, when problems of application of law, of adjusting the rules of a codified system to actual controversies, are involved, as in the present movement for "*libre recherche scientifique*" in France, and for "*freie Rechtsfindung*" in Germany, the attention of the jurist is at once drawn to the English courts, and the advantages of our system are perceived and admitted. On the other hand, we fail in a competition between systems of legal rules, as distinguished from modes of judicial administration of justice. In a comparison of abstract systems, the common law is at its worst. Hence, in the trial of strength in Japan, English law failed. In a test of the actual handling of single controversies, it prevails, as in the many instances noted above. In other words, the secret of the vitality of the common law is in its doctrine that causes are to be judged by principles reached indirectly from judicial experience, not by deduction from rules established by the sovereign will. It is because of this fundamental idea, not because of the persistence of a taught tradition, that the common law invades the domain of its great rival at so many points and holds so tenaciously every inch of the ground won.

And yet Maitland was right in saying that taught law is tough law. Every judge and every lawyer, whether trained by reading in an office or by teaching in a school, has his legal mind formed, in its impressionable pe-

riod, by the traditional mode of thinking upon legal and juristic questions. Thus the traditional mode of thought becomes part, and the chiefest part, of his mental equipment. All questions are worked out from the standpoint of this received juristic tradition. Subconsciously all new elements in the law are molded thereto. Consciously or subconsciously, legislation at variance therewith is viewed with suspicion, if not with hostility. The fundamental principles of the received tradition are taken to be fundamental principles of all law. It is assumed without question that the only measure of a critique of legal rules is an ideal development of these principles. In this sense taught law is tough law, as everyday experience of American law testifies abundantly, and as legislator, sociologist, criminologist, labor leader, and business man have become bitterly conscious. But if this toughness of the mode of juristic thinking which we call the common law is the toughness of a taught tradition, the conflict between our law and those who are working for social progress has its roots ultimately in our teaching of the law. In that event, as I have said more than once elsewhere, it is not recall of judges or recall of judicial decisions that should be invoked, but rather recall of law teachers, or at least recall of a great deal of law teaching.

If, then, the public are rightly dissatisfied with the jurist, and the jurist ought to be dissatisfied with himself, how shall he be saved? In a shifting of the very foundations of legal systems, it cannot be hoped that any one can map out the whole future. Indeed, those who believe in the efficacy of effort, in law as in other fields of human endeavor, must not make the mistake of reverting to the eighteenth century notion that we may lay out a chart for all time to come. We can hope only to see some of the ways which are open and to see part of the way along each. The ways which seem to me open, the ways which seem to invite the best efforts of American jurists in the immediate future, lead to attack upon the three defects in our taught and received tradition, which I endeavored to point out at the outset. Let us examine these in turn.

If one doubts it, he has only to compare a modern institutional book on the Roman law, a modern elementary text-book of French law, or a modern introduction to the German code, with the conventional Anglo-American text-book of elementary law, to see that we have no true system of the common law, much less a system of the law that actually governs. For a time in the juristic study and development of any law such a condition will obtain. Englishmen have been fond of pointing out how largely it obtained in the classical period of the Roman law. It must be conceded that the system of Roman law as it is taught and expounded to-day is

chiefly the work of Germans, who have worked over and systematized Roman materials, rather than of Romans. The system of Roman law does not begin with Galus, it begins with Donellus. A condition of a body of law wherein the several departments are developed in detail and are systematized without any system of the whole represents a natural and in its time a desirable stage of development.

Metaphysicians may debate as they will the logical priority of the whole or of the parts. Certainly in the evolution of law particulars come before generals, parts come before wholes. I repeat, therefore, the stage of development which is represented by the present condition of our law was natural and desirable. Indeed, it was necessary; for system must first be brought into the details, into the several special fields of the law, before it may be brought into the whole. System had to be worked out in each department of the common law in detail, before any system of the common law as a whole which would be worth while could be looked for. This should be emphasized, because those who have pointed out the lack of system of the common law in the past have put the blame in the wrong place. It is not that we have been wrong in working as we have upon system in each of the individual departments of the law, nor in the method by which we have studied and taught the law in each of these departments. Those who charge that we have erred in these respects, and who cry for system of the whole first, are fond of citing us to the Roman law and of invoking the supposed, but in truth much overrated, systematic perfection of the classical Roman law. Let me vouch the Roman law in this connection, for it sustains the argument I seek to make.

Be it repeated, system of the Roman law, as we now think of it, is a modern achievement. How did it come about? Its roots are to be found in interpretation and development of individual texts of the *Corpus Juris* by the glossators, exactly as scientific study with us began with critical consideration of individual decisions. Next came systematic study of particular subjects or of particular departments of the law, in which the results of the first period were worked over in better form. This is the period of the commentators, and it has its analogue in the work in which American law schools have been engaged for the past forty years. Finally came a system of the whole civil law, which has been the work of a long line of jurists since Donellus. If the civil law is invoked, I submit the analogy suggests no more than that we have gone through the first and the second of the stages and are ripe for the third. We have been upon the right road in the past, and our course is not to throw over what has been done since Langdell's new start and begin anew; but to recognize a new goal and set forth in that

direction from the point to which his method has brought us.

Conceding this much, the condition of our law with respect to system is one which the teacher of law should recognize and should face resolutely. We have a system of contracts, limited, however, to substitutional redress, a system of torts, a system of specific relief, and we have systems of more detailed special fields—of sales, of duties of public service employment, of quasi contract, of agency, of trusts. Both in teaching and in judicial decision, these fields are quite distinct. What is logically the same problem sometimes gets a different answer according to the particular field in which it chances to arise. We have got beyond a condition of independent rules into a condition of independent bodies of rules. To get thus far, indeed, has been no mean achievement. In 1870, as the work was just beginning, the editors of the *American Law Review* could say, "We are inclined to think that Torts is not a proper subject for a law book." One need only reflect upon that statement, and then compare the first volume of Ames and Smith's *Cases on Torts*, representing the ideas of 1874, with its successive categories of Trespass, Disselsin, Conversion, Defamation, Malicious Prosecution, etc., on the one hand, with the second volume, representing the ideas of 1893, with its generalizations of Legal Cause, Duty of Care, Standard of Care, Degrees of Care, and the like, on the other hand, to see what has taken place. The advance from Greenleaf on Evidence to the system outlined by Thayer and carried out in thorough-going detail by Wigmore, from Washburn on Real Property to the system worked out by Gray and applied to the problems of a local law by Kales, from Parsons on Contracts to the system begun by Langdell and completed by Williston, from the confusion of Perry on Trusts to the system wrought by Ames, shows what has been the task of American law teaching for the past forty years and that the task has been well done. It is time now to essay a new task.

Kohler, while praising our method of reaching rules inductively upon the basis of judicial experience, says rightly that Anglo-American legal science does not go beyond the most scanty beginnings. Long and thoroughly as we have studied the common law, we have no system of the common law as a whole at a time when a system of law as a whole, including both the imperative and the traditional elements, is coming to be much needed. Our law is cut and cross-cut in three directions by three great lines of cleavage—common law and legislation, law and equity, real property and personal property. In consequence, nearly every question involves two, and often three, modes of approach. Nearly every rule has to be learned over again in two other ways, or is subject to the qualification that it is thus if one

sort of relief is sought and otherwise if another procedure is open, or thus if one sort of property is involved and otherwise if another. All kinds of combinations of these three are possible, and singly or in combination they give rise to a great variety of arbitrary rules and distinctions. Thus, in contracts (regarded as a matter for proceeding at law), we have rules as to condition based on fundamental ideas of justice, which, when one proceeds in equity, and so has to do with essentially the same questions from a historically wholly different standpoint, are replaced by rules as to risk of loss, proceeding upon theories of equitable ownership, or of mutuality, based upon notions of fairness in awarding extraordinary relief. In sales of personalty, we have doctrines now become legal which give results that in case of land do not apply at law and may be reached only circuitously in equity.

And yet the line here is by no means clear and plain. Judicial absorptions of equity into law and piecemeal statutory changes have made the line exceedingly irregular and at places difficult to draw with precision. Although in all but five of our jurisdictions law and equity are administered by the same court, and often by the same judge, and in a majority of our jurisdictions they may be and are administered in the same proceeding, we still think and teach, and courts still judge, as if they were distinct jurisdictions, and as if mere questions of the remedy to be applied by one court, in many cases in the identical proceeding, were questions of the competency of more or less hostile tribunals. These lines of cleavage are purely historical in origin and subserve no useful purpose. On the other hand, they lead to difficulties of procedure and to technicalities of substantive law which impede the administration of justice by causing uncertainty, injure respect for law by making it appear arbitrary and irrational, and hinder the progress of the law by compelling teacher and student to busy themselves in learning the details of logically arbitrary rules.

In addition to the great lines of cleavage named, there are numerous minor lines, crossing the field of law in every direction. In a sense, indeed, every minor department of the law has a fence about it, and treats general legal conceptions, when found within its limits, much as an individual common-law jurisdiction—say a state of the Union—treats of a general question of law when it first arises in its courts. As we have New York rules and Massachusetts rules, and Illinois doctrines and Wisconsin doctrines, so the same legal term may have a different meaning or the same legal conception a different color according to the connection in which it chances to be applied. Thus, chiefly for historical reasons, "consideration" has a different meaning, according to whether

one is in the field of contracts, of negotiable instruments, of equity, or of uses and trusts. It is not clear, to put it mildly, that the conception of purchase for value is the same in equity, in sales, in negotiable instruments, in quasi contracts, and under the recording acts. And yet the fundamental principle is identical.

Lack of system is not a merely theoretical or academic defect in our law. System subserves a highly practical end. Since it is impossible to anticipate the infinite variety of human action by rules established in advance, our chief reliance for the administration of justice according to principle, rather than according to caprice or to the light of nature tempered by the state of the judge's digestion for the time being, must be the disciplined reason for the judge's working upon the materials of a judicial or juristic tradition. As these materials increase in bulk, and they have so increased enormously in the present generation, they must be organized, if they are to be handled effectively. That they are not handled as effectively as they were in the past is in no small degree due to the great increase in bulk that has taken place without any corresponding improvement in organization or system.

To be more specific, four effects of want of system in our law and of the persistence of lines of cleavage, existing only from accidents of historical development and subserving no useful purpose, deserve notice.

In the first place, want of system and arbitrary historical divisions and far-reaching distinctions of no logical import interfere seriously with thorough apprehension of the law by the student. We must acknowledge that it is downright impossible to teach the whole law, with the thoroughness with which it ought to be taught, and with which what we essay to teach is taught in our law schools, within the limits of a three-year course. Yet I believe we should agree that, as things are, three years after college is as much as the ordinary student ought to give to the professional school. But we cannot reduce the bulk of the law. The law is likely to go on becoming more complex and more detailed. We can only put it in better order, and give it that organized form and logical consistency and coherence that will make it possible to teach and to learn thoroughly not merely method, but the essentials of every branch of the subject. The problem is by no means novel. The system of Roman law was worked out for the civilian to meet precisely this situation. The method of the glossators and of the commentators was such that in time no professor could cover more than a fraction of the field and no student could do more than learn method and be conducted by the established method over some chosen bit or bits of the law. Hence arose an imperative demand for system, of which the so-called "*mos gallicus*" and the resulting

system, which is the pride of the civilian and of the Roman, are the direct result.

Again, and this is connected closely with the foregoing, want of system, precludes thorough-going knowledge of the law by bench and bar. I need not go into this matter in detail. With some warrant we might think that the assertions of Mr. E. V. Abbott, in his paper upon the lawyer's ignorance of the law in the Outlook of September 5, 1908, are overdrawn. When he says that "the lawyer's ignorance of the law is something beyond the power of words to describe," we may, perhaps, suspect that the eminent client caretaker in the metropolis, who is principally a business adviser, and as like as not presses a button for a boy to bring him his law as he presses a button to summon his stenographer or his carriage, is not a fair type of the legal attainments of the American bar. But the consensus of testimony upon this point may not be ignored. The symposium in the Green Bag in February, 1910, of the paper of Mr. Coudert read before the Section of Legal Education of the American Bar Association last year, and much more in like vein that might be cited, demonstrate that the profession is conscious of a grave condition.

Thirdly, want of system makes against the one influence which is at all strong for unity of law, namely, the common substratum of juristic tradition upon which rests the law of all but one of our jurisdictions. Twenty years ago, Judge Dillon, speaking no doubt for the generation in which he practiced and judged, was able to speak of the unity of American law as an unquestioned fact. "A most fortunate circumstance it is," he said, "that, divided as our territory is into so many states, each supreme within the limits of its power, a common and uniform general system of jurisprudence underlies and pervades them all." "The mere fact," he continued, "that one and the same system of jurisprudence exists in all of the states is of itself of vast importance, since it is a most powerful agency in promoting commercial, social, and intellectual intercourse and in cementing the national unity." Probably none will doubt the desirability of the fundamental unity of law throughout our domain, of which Judge Dillon speaks. One measure of law is as important to the United States of to-day as one measure of wine and one of ale and one of corn were to the England of Magna Charta. But it is obvious that this fundamental unity of law is coming to be more formal than substantial, more theoretical than actual. Professor Wigmore says truly: "The fact that there are half a hundred practically independent jurisdictions must be conceded and faced. What is the law? is a question which cannot be answered, except as with fifty tongues speaking at once. What the law is in Illinois may well be not the law in Massachusetts or in California. It is time for the profession to

discard the amiable pretense that precedents can be cited interchangeably."

Our law is held together by the traditional element which underlies the law of each state. As a general tradition, taught alike, in substance, throughout the country, it is, we may admit, a tough tradition. But from the very nature of its materials and of its mode of development it is a very flexible tradition. Flexibility is a necessary quality of a body of principles resting upon judicial experience in the decision of causes and formulated in judicial application to concrete controversies. This quality, indeed, is the strength of our law. We ought not to think of abandoning our system of judicial empiricism, which the Continent is just beginning to appreciate and to imitate. But we must recognize that the circumstances under which the common law is now handed down by our courts are very different from those in which the traditional element of our law arose and was developed in England and was received in America. The common law grew up in and for one jurisdiction, with one ultimate reviewing tribunal. It grew up in and for periods of legislative quiescence. It was developed under theories of finding, not of making, law. Coke thought of it as "nothing else but reason." In the classical common law the words "Be it enacted" do not constitute a *deus ex machina* which may solve every difficulty. Moreover, the common law was developed in England by strong judges, great officers of state, who were independent and able to impose their ideas upon the public administration of justice. Finally, the common law was received and established in America by courts that had the prestige of the English tradition.

One need not say that all of these conditions are altered. In America to-day we have some fifty independent jurisdictions, each more and more pulling its own way upon questions of common law. We have fifty active legislative bodies, each ambitious to lay down rules, and each attempting to deal with all manner of detail. Moreover, a political theory of absolute lawmaking has for a time replaced the idea of finding the law. Law existing by and through state enactment and resting upon extrinsic authority is thought of as the type, rather than law existing by and through conformity to or deduction from principles of justice and resting upon intrinsic reason. The independent judge, standing out among all the officers of the state as a unique figure, is passing rapidly. Chosen by popular vote for short terms, often by a double process of primary and election, subject in some jurisdictions to recall, the judge is no longer of the type by whom the common law was molded and developed in England and received in the United States. More and more the American judge is coming to be a magistrate of the Continental rather than of the English type. In an increasing number

of jurisdictions he is subjected to the necessity that presses so hard upon the modern American executive—of serving us up a sensation every morning for breakfast in our daily paper. Such a magistrate can no more make the law, by common-law processes, than the type of legislator we have had in the past has been able to make law by ordinary processes of legislation. Hence our common-law tradition is now more and more committed wholly to the teacher and text-writer.

But while the disintegrating forces are thus active, the resisting force is weakened. Tough as it is, our common-law tradition cannot hold the law together unless it is made more easy of apprehension, both as a whole and in its details, so that the whole profession may master its system, and judge and lawyer may become possessed of the key to its rules, before and not after particular questions arise, and unless it is made more consistent, more systematic, and at many points more modern, so as to appeal to the new generation as a precious possession, even as its older form was thought by our fathers their most valued heritage.

A new period of making over the common law appears to be at hand. For in the history of our legal system from the thirteenth century to the present, along with a real unity which makes the common law as a mode of thinking, as a mode of reasoning upon legal subjects, the same in substance in one century as in the next, and the same in England, the United States, Canada, and Australia, just as the Roman tradition has continuity and essential identity from the third century to the twentieth, there are no less real points of new departure, periods, if not of rebirth, certainly of rejuvenation, in which liberalization has affected the law from top to bottom. In the past, such periods have been the development of equity through the rise of the Court of Chancery, the absorption of the law merchant, and the legislative reform movement inaugurated by Bentham. I believe another such period is upon us, and that as an infusion of morals into the law made over the law in the sixteenth and seventeenth centuries, an infusion of mercantile custom made over the law in the eighteenth century, and a legislative infusion of Bentham's ideas made over the law in the nineteenth century, in the same way in the twentieth century the law will absorb the new economics and the new social science, and will be made over thereby. Indeed, the process of absorbing this new element is going on and is beginning to go on quite as much through judicial decision as through legislation.

Sir Henry Maine put the agencies of growth in law as three: Fictions, equity, and legislation. To these, I venture to think, we must add a fourth, namely, juristic development. If there were time, I should vouch both Roman law and the law of Continental

Europe in support of this contention, and I believe our own law is about to show the same thing. For as yet we have had no real juristic development of the common law. But in the circumstances under which the common law must be made over in the period that is at hand, may we rely upon the agencies that have served in the past? There is no common legislative authority set over all common-law jurisdictions, nor is there likely to be one in any period we can foresee. Moreover, the conditions of legislative lawmaking to-day, and even more those of direct popular lawmaking, are not such as to warrant belief that legislation may do more than add sanction to what proceeds from some other source. Again, there is no common reviewing tribunal set over all common-law jurisdiction, nor is the world likely to see one, at least within any period we can foresee.

There are no signs that the bench in America is likely to regain the position demanded for purely judicial development of the common law. Stress of business in the modern industrial community, added to the conditions already referred to, make it unlikely that American courts will much longer be able to do more than give authoritative form to what has been worked out and formulated by others. Indeed, we see such a condition to-day. For example, who would contend that either legislation or judicial decision, with no stimulus from without, could ever have done for our law of evidence what has been done by Thayer and Wigmore? As our jurists give over the purely historical method, which has governed exclusively in the immediate past, as efficacy of effort, already part of the social and political creed, becomes part of the juristic creed, the law teacher and the law writer—and I take it they will be one—must be our chief reliance. For the teacher of law is coming to work in the condition of permanence and independence that were the strength of the common-law judge. He is in the position to do historical, critical, and analytical work that would be impossible, even if in place, in a modern judicial opinion. Moreover, he may deal with the law and with departments of the law as a whole, while a court must look at each piecemeal.

It is true the profession is rightly suspicious of what has been styled jurist in the past. Also law schools are rightly suspicious of any supposed higher law than the law that obtains in action in the courts. Jurisprudence must have its feet upon the ground and must not have its head so high in the clouds that it cannot see where it is going. But there is no danger so long as our study and our instruction follow the concrete method of the common law. Indeed, our method of instruction from adjudicated cases precludes any abstract system of pedantic generalities. With us every ju-

ristic theory is of necessity tested at once by application to a mass of concrete problems yielded by the judicial experience of the past. But there is another factor that should prove of no less importance. The theories of the Roman juriconsult became a practical law for the world largely because he had full liberty to evolve them, but no power directly to impose them. The actual administration of justice was not in his hands. Judges and magistrates applied the law, and chose from those offered them by the juriconsults the theories and the principles they would follow and give effect. Thus the competition of juristic theories and juristically formulated principles resulted in a gradual discovery of the best path for judicial practice, just as a process of judicial inclusion and exclusion, as Mr. Justice Miller used to put it, gradually found the road for our case law in the past. In the same way the work of the law teacher must win its way, not merely in the lecture room, but in the courts, and we need not fear that it will give us a law too remote from the actualities of life.

In urging upon American jurists and teachers of law that they turn to the problem of a system of law, I wish to disclaim any sympathy with so-called elementary law, as we have had it and still have it in some places. Nothing that bears that name is a system of law, or of the common law, in any modern sense. Nor will it be such until our teachers of law, for no one else is likely to do it, have thought through and threshed out a system of the law of English-speaking countries as a whole, as they have worked out system in each separate department of that law.

I have omitted thus far to speak of the fourth obstacle to the progress of the law, resulting from our lack of a system of the law as a whole, and the maintenance of lines of cleavage due to accidents of historical development, because it is identical with the second of the three defects in our taught law, as stated at the outset, namely, the attitude of law, lawyer, and court toward legislation. In part this may be met by a true system of the law, in which rules, of what origin soever, shall stand together as co-ordinate parts of the *Corpus Juris* in the books, as they do or ought to do in action. But more is necessary. In a period in which the legislative quiescence, assumed by the common law, has given way to prodigious legislative activity, in which legislation is making over, or attempting to make over, or at least to restate, whole departments of the law, and in which there is some ground for thinking that the growing point of the law has shifted to legislation, the attitude of our taught tradition toward this new element of the law is a matter of grave concern. For the excessive output of legislation in all our jurisdictions is no more striking than the indifference with which that output is regarded by courts, lawyers, and teachers.

Jhering tells a story of a German professor to whom a question of commercial law was submitted. He returned an elaborate and thoroughly reasoned answer, based upon the principles of the Roman law, then the basis of German common law, and hence of legal instruction. Upon suggestion that he had omitted to notice a section of the commercial code which appeared to govern, he responded that, if the commercial code saw fit to go counter to reason and the Roman law, it was no affair of his. Surely we may sympathize with the learned professor, for, under the influence of a taught traditional law and of a historical school of jurists which scouts legislative lawmaking, we proceed in much the same way as he. Our text-writers will scrupulously gather up from every remote corner the most obsolete decisions and cite them diligently at every turn. But they seldom cite any statutes beyond those landmarks which have found a place in our common law. When they do refer to statutes, it is almost always solely through judicial decisions in which they are construed or applied.

Nor will it do to say that this is justified by the instability of our legislation. Unstable as some of it is, much of it is thoroughly stable, while much of our case law is utterly unstable. None the less stable and unstable are ignored in the one case as consistently as they are preserved in the other. No; it is not that statutes are unstable. It is rather that the professional reader is not interested in them. He does not feel that they are law in the same sense as an adjudicated case. He does not want to cite them if a case may be had in which the portions of the statute applicable have been incorporated.

In the same way the courts, if they do not actually hold important legislation to be merely declaratory of the common law, too often in effect make it declaratory by citing prior judicial decisions and assuming that they express the rule enacted by the statute. This confirmed judicial habit is threatening to undo much of the uniform state legislation upon commercial subjects. In the same way there is a marked tendency to read common-law doctrines into statutes which were intended to alter the common law. This tendency for a long time defeated the purpose of codes of procedure. In the past few years it has been manifest in attempts to read contributory negligence into the federal Safety Appliance Act. Whenever we get workmen's compensation acts well established, unless a change in our attitude toward statutes supervenes, they are likely to suffer for many years from interpolations of rules founded upon ideas wholly at variance with the principles on which such legislation proceeds.

There is more than one reason for the attitude of our law with respect to legislation. In part it rests upon common-law ideas

which grew up in an age of legislative quiescence. In part the masterful temperament of Edward Coke, who would brook no lay interference with the body of law he had laboriously dug out of the parchments of the past, impressed his ideas upon the tradition of which he was the authoritative exponent. In part eighteenth century ideas of finality have contributed; for the idea of first principles of law inherent in nature has always led in practice to an idea that these principles are to be identified in an ideal development of the legal principles in which the particular oracle of the law of nature chances to have been trained. Accordingly, the study of Blackstone, by which, until the last generation, all students entered upon study of the law, tended to confirm the not unnatural conviction of the nineteenth century American lawyer that the chief dogmas of the common law were beyond the reach of legislation and as it were had been established by nature.

In large part, however, the attitude of our law toward legislation rests upon, and is perpetuated by our teaching, which wholly ignores the imperative element, and treats of the law as if it consisted of the traditional element only. Thus our teaching perpetuates the arbitrary division of the law according to the source by which its rules chance to have been formulated. It perpetuates the doctrine whereby the older element, represented by the traditional course of decision, stands for the real law and furnishes principles and analogies, while the newer element, represented by legislation, is regarded as something alien, intruding in the body of the law, and can furnish only detailed rules for the cases actually covered. It leads to a conflict between courts and people in almost every case in which social legislation involves abrogation or modification of rules established by tradition or judicial decision; for the legal theory and the political theory of lawmaking are incompatible. If, as our eighteenth century books taught us, and lawyers on the whole still appear to hold, consciously or subconsciously, the principles of law are absolute, eternal, and of universal validity, the state enforces law because it is law, and constitutions and enactments can be no more than declaratory of principles of right and justice and reason which have an independent existence.

If, on the other hand, as our classical political theory has it, law is law because the state has so willed, the judicial function is to be held down to one of genuine interpretation and mechanical application. Hence it happens frequently that, while the lawyer thinks he is enforcing the law, the people think he is overturning the law. Not only do courts and laws suffer from the suspicions and misunderstandings that flow from this divergence between legal theory and political theory, between the law as taught to the lawyer and as taught to the layman, but leg-

islation is kept back and lay crudity is given full rein, because jealousy of lawyers and suspicion of legal methods preclude reliance upon the lawyers, by whose experience it should be guided and to whose judgment matters of draftsmanship should be submitted.

Last, but far from least, the teacher of law should consider or reconsider the attitude of his teaching, of the tradition which he teaches, and of courts and bar toward the purposes and policies of modern lawmaking—the attitude of indifference which has prevailed in the immediate past toward the social ends, to which law and laws are but means. I have discussed this matter at length on another occasion. Moreover, I suspect that our training qualified us less, and we shall have more to unlearn, here than at either of the two points already spoken of. It is enough to say here that we teach thoroughly common-law method. We teach thoroughly common-law thinking. On the whole, we teach thoroughly the principles of the main departments of the common law. Thus we fit men well for the daily contests of a forum in which the common law obtains. But this method, this thinking, these principles, are not those of the lawmaking of to-day. Hence our teaching is not unlikely to put the trained lawyer wholly out of sympathy with the most vital matters in the present law. If lawyers are to be of service in the community as well as to clients, teaching of law must take account of this. It is idle to trust wholly to the colleges, though no doubt much may be done by suitable preliminary education. For a sound knowledge of law is a prerequisite of study of jurisprudence in any of its forms, and nowhere more clearly than in the newest form of sociological jurisprudence. Socialization of our legal tradition is as inevitable as were the successive liberalizations in the past by equity, by the law merchant, and by legislative reform. Surely it is not our part to be idle spectators, or to be critical spectators, of the sort who merely record and sum up the results.

In conclusion, let me make it clear that I do not urge that we overhaul our law school curricula over night. Nor do I urge that we add new courses to our curricula already overburdened for the time allowed. I would urge rather a progress in our thinking, and hence, in time, in our teaching; a study of system of the law as a whole, and a fitting of the principles established by enacted law into the system; a study of the relations of the traditional and the imperative elements of law, and working out of better doctrines with respect thereto, and of theories more in accord with conditions of a period of legislation and the demands of social progress; and, finally, a study of the principles and policy of modern lawmaking, of the purposes and ends of law to-day as a means of social progress—all these in the same spirit and

with the same zeal wherewith we have studied the principles of the common law, discovered the spirit of our legal tradition, and wrought system in particular departments of the common law in the past. When we have done this studying, and have achieved results along these lines in the daily battle of wits in the classroom with respect to our courses as they now stand, we may be ready to add new courses or to rearrange curricula.

If the ambition of the teacher of the law were no more than to master the rules that once obtained as law, to derive from them legal conceptions and principles, and develop their potential content logically, and to spend his days expounding them as a fixed system, if he did not wish, with Langdell, that he had lived in the days of the Plantagenets, he might at least wish that the law remain stationary as it stood a third of a century ago. Indeed, the practical end of his teaching would be to hold it stationary, so far as law may be held stationary; and in so far as he succeeded, he would but bring about a continually widening gulf between the law in the books and the law in action. But if he has a further ambition of being able to point to the work of his hands in the immemorial and yet freshly growing fabric of our common law, an age that promises to rival the age of Coke and to surpass the age of Mansfield as a constructive epoch in legal history invites labor along new lines.

The historical school made law teaching a force for unity, for system, for a reasoned body of principles in each department of the law. Its work is done. But the possibilities of law teaching as a force for unity, for system, for reason, are not spent. These are not to be attained by holding our taught tradition fast to the well-worn path and fighting an obstinate retreat against development in new directions. If taught law is tough law, it may also be living law. Let us bestir ourselves, to the end that its toughness be that of living tissue, not that of dead fiber.

lum than with its place in our legal system; but in considering the matter it will be found that the two are so closely related that the one cannot be intelligently discussed without the other.

In his lectures upon Equity, the late Mr. Maitland says:

"Suppose that we ask the question: What is Equity? We can only answer it by giving some short account of certain courts of justice which were abolished over thirty years ago. In the year 1875 we might have said: 'Equity is that body of rules which is administered only by those courts which are known as courts of equity.' The definition, of course, would not have been very satisfactory; but nowadays we are cut off even from this unsatisfactory definition. We have no longer any courts which are merely courts of equity. Thus we are driven to say that equity now is that body of rules administered by our English courts of justice which, were it not for the operation of the Judicature Acts, would be administered only by those courts which would be known as courts of equity."

If in this passage we substitute the word "American" for "English," and the phrase "Code of Civil Procedure" for "Judicature Act," his remarks apply equally to a very large number of our American states. He continues:

"In no general terms can we describe either the field of equity or the distinctive character of equitable rules. Of course, we can make a catalogue of equitable rules, and we can sometimes point to an institution, such as the trust, strictly so called, which is purely equitable, but we can make no generalization."
* * *

"I do not think that any one has expounded or ever will expound equity as a single, consistent system, an articulate body of law. It is a collection of appendixes between which there is no very close connection. If we suppose all our law put into systematic order, we shall find that some chapters of it have been copiously glossed by equity, while others are quite free from equitable glosses."
* * *

"When, some years ago, the new scheme for our Tripos was settled, we said that candidates for the second part were to study the English Law of Real and Personal Property and the English Law of Contract and Tort, with the equitable principles applicable to these subjects. It was a question whether we ought not to have mentioned equity as a separate subject. I have no doubt, however, that we did the right thing. To have acknowledged the existence of equity as a system distinct from law would in my opinion have been a belated, a reactionary, measure. I think, for example, that you ought to learn the many equitable modifications of the law of contract, not as part of equity, but as part, and a very important part, of our modern English law of contract."

The Place of Equity in Our Legal System

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"What is Equity?" As a teacher of this subject, I find myself confronted with this question at the opening of each college year. As I seek to answer it with satisfaction both to my students and to myself, I am met with another like unto it: "Why do we teach Equity as a subject by itself?" It is to the problems raised by these questions that I would direct your attention this evening. Perhaps what I shall have to say will deal more with the place of Equity in the law school curricu-

I need not tell you that an examination of the announcements of our American law schools reveals no signs of any disposition to adopt Mr. Maitland's view. We are, in his phraseology, acknowledging the existence of equity as a system distinct from law, and so are following—if he be right—a “belated and reactionary” course of procedure. Take up the catalogue of almost any American law school, and what do you find? As a typical example—selected because it is typical, and in no respect whatever exceptional or peculiar—let us read from the catalogue of the Law School of Stanford University:

“EQUITY I.—Historical development of equity; relation between equitable rights and powers and legal rights and powers; general principles relating to jurisdiction, procedure and remedies; specific performance of contracts with special emphasis on the relation between vendors and purchasers of realty; introduction to mortgages; bills for an account; specific reparation and prevention of torts, including waste, trespass, nuisance, disturbance of easements, infringement of patents and copyrights, interference with business relations.

“EQUITY II.—Trusts.

“EQUITY III.—Interpleader; bills of peace and quia timet; cancellation of contract; clouds on title; perpetuation of testimony; rights of future enjoyment; reformation and rescission of contract; mistake, fraud, misrepresentation; duress and undue influence.”

My thesis this evening is that Mr. Maitland is right, and that our American treatment of equity is belated and reactionary, because it is unscientific, both from the point of view of analysis and from that of educational expediency. Let me say, first of all, that I am heartily in accord with that great master of Equity, the late James Barr Ames, when he says:

“Time has strengthened the conviction of the present writer that the principle, ‘Equity acts upon the person,’ is, and always has been, the key to the mastery of equity. The difference between the judgment at law and the decree in equity goes to the root of the matter. The law regards chiefly the right of the plaintiff, and gives judgment that he recover the land, debt, or damages because they are his. Equity lays the stress upon the duty of the defendant, and decrees that he do or refrain from doing a certain thing because he ought to act or forbear. It is because of this emphasis upon the defendant's duty that equity is so much more ethical than law.”

Yet, although the difference in procedure was and is of the greatest importance, it may be, and, I think, often is, greatly overemphasized. Procedure in personam may be, and frequently is, used to protect and enforce rights in rem, as well as rights in personam, and the nature of equitable rights is not necessarily different from that of legal rights

merely because a different remedy for their actual or threatened violation is offered.

Let us now examine the principal subjects usually discussed in books or courses upon “Equity,” or “Equity Jurisdiction,” as it is so often called, with a view to locating each in its proper place both in a scientific arrangement of our law and in a properly constructed curriculum for a law school. I need hardly say that my treatment must, if I am to keep within the limits of the time at my command, necessarily be brief, sketchy, and incomplete—suggestive rather than exhaustive.

1. Trusts

“Of all the exploits of Equity,” says Mr. Maitland, “the largest and most important is the invention and development of the Trust. It is an ‘institute’ of great elasticity and generality; as elastic, as general, as contract. This, perhaps, forms the most distinctive achievement of English lawyers. It seems to us almost essential to civilization, and yet there is nothing quite like it in foreign law.”

To this we shall all agree, and it is, of course, quite clear that we must all acknowledge that the law of Trusts is a distinct system, a “single, consistent system,” an “articulate body” of substantive law, and not a mere “appendix” or “gloss” to some portion of the common law. It must, therefore, always continue to be treated and discussed as a separate subject, both in treatises upon our law and in the classroom. In it, more clearly than in any other branch of equity, perhaps, do we see revealed both the strength and the weaknesses of the equity procedure; as well as the development of the ethical character of equity, the retention of a larger discretion by the chancellor to do what is “equitable” than any mere common-law court possessed, and the power of equity to act as the great legal reformer during that period of English history when, although the common law had shown itself incapable of so changing as to meet the needs of society, the method of making law by statute had hardly begun. The history of the “use” and the development of the modern trust from it—the gradual transformation of the merely personal right of the “cestui que use” into the so-called “equitable interest,” so that it seems to be almost equivalent to a dominium or ownership—must ever remain one of the most fascinating, and at the same time important, subjects in our system of law. Yes, the law of Trusts is, and always must be treated as, the great contribution of equity to the substantive law, and must, of course, be studied as such.

2. Torts

A second part of “Equity” as we now expound it deals with the “specific reparation for and prevention of torts, including waste, trespass, nuisance, disturbance of easements, infringements of patents and copyrights, interference with business relations,” etc.

Where, in a scientific arrangement of the law, should the discussion of these subjects come? With one or two relatively unimportant exceptions (such as, for example, in the case of equitable waste), "Equity" here is merely offering an additional and more adequate remedy for the protection of legal rights of property, tangible or intangible. Some one is threatening to invade my common-law rights in land or chattels, my right to personal security or good name, or my right to carry on business free from unlawful interference. Actual invasions of these common-law rights are redressed primarily by the appropriate common-law actions; preventive relief to protect these same rights from threatened invasion is obtainable only "in equity," simply because—for reasons purely historical—"equity" and not "law" developed a procedure adopted to give that kind of relief. To-day in a majority of our states the same court administers both remedies.

It is my contention that the subjects dealt with in this branch of "Equity" should be placed in their appropriate setting; that the question, whether a given legal right is protected from actual or threatened violation by the use of the equitable remedy of injunction or decree for specific reparation, should be discussed and answered in connection with the discussion of the nature of the particular right and of the methods by which it can be invaded. Whether this can be better done in the course on Property, where we are engaged more especially in emphasizing the right, as I think it can be in the case of such a subject as "Waste," or should be left for the course in Torts, where our attention is directed more especially to the act which violates the right, as in the case of trespass, is a subject that need not detain us here. But, taking "Waste" as an example, my proposition is that we should discuss the whole subject together: What is waste, legal or equitable; the nature of the right invaded, and the acts which invade it; the remedies for an actual or threatened invasion, whether they are common-law actions of waste, on the case, trover, or assumpsit, or bills in equity for specific prevention of threatened waste and accounting for waste already committed.

Consider the questions of infringements of patents and copyrights. No one would dream of writing a treatise or giving a course on "Patents" or "Copyrights" which ended with a discussion of the nature of the rights of patentee or owner of copyright and the common-law remedies for their violation, leaving the inquiring student to learn elsewhere about injunctions to stop further infringements and accounting in equity for the profits from infringements already committed—say in a treatise on "Equity," dealing with everything from specific performance of contracts to mortgages and bills of interpleader. And yet in many schools something nearly as

bad is done. In the course on "Equity" we give the student, who knows nothing about patent or copyright law and the common-law side of the subject, a brief and fragmentary treatment of equitable remedies for infringements of patents and copyrights, without having laid any foundation for an understanding of it. That this is not a scientific procedure seems obvious, and not to require farther discussion.

3. Specific Performance

Turning to another portion of "Equity," as usually taught, we find "specific performance of contracts," usually given in the second year. Let us glance back to the first year's work in contracts and examine its contents. We find, first, the formation of contracts—offer and acceptance; consideration. With, perhaps, some slight exceptions, this part of the law of contracts is quite free from equitable glosses, so all is well.

We find, second, the "performance of contracts," as one of our leading casebooks puts it, or "the operation of contracts," as another has it. Under this (dealing only with the most important topics) we find the subject of conditions in contracts; i. e., given a contract, what in a court of common law are the legal consequences attached to that state of facts? What are the rights, duties, and liabilities *at law* of the parties? What must each party do in order to put the other in default? Ask the instructor about the rights, duties, and liabilities *in equity* of the same parties under the same state of facts, and he is silent—that belongs to the course on specific performance next year. And yet this chapter of our law has, in Maitland's happily chosen phrase, been "copiously glossed by equity." I can do no more than hastily choose at random two or three typical examples.

A contract between A. and B. says that A. is to do a certain act on January 1st. He does it January 2d or 10th, or perhaps later. Was "time of the essence" in a court of law, or, rather, if he does it later, can he acquire a right to sue in special assumpsit for breach of contract, if the other refuses to go on because of the delay? How would it be if the contract were one of which equity would decree specific performance and the action were in equity? Would willingness to perform at the later date be sufficient? Did "equity" take a different view from "law" upon this point? If so, why? Need we relegate the discussion of this to another book, or postpone it until another year, or is it not the sensible thing to dispose of the whole problem once for all? What rational objection is there to so natural a procedure?

Consider another example—a bilateral contract between Doe and Roe for the purchase and sale of a house and lot, performance on both sides to take place one month from date. An accidental fire destroys the house. Doe offers a deed of the empty lot; Roe refuses to

accept it and pay the purchase price. Does he sue in assumpsit; can he recover? This we settle in the course on contracts under the heading of "Conditions." How would it be if Doe filed a bill for specific performance? At once the instructor throws up his hands. That is not a part of the law of contracts; that is a part of "Equity." Why not proceed at once to examine the equitable as well as the legal rights of the parties arising out of this one state of facts, and, by contrasting the different answers—if different they be—and the reasons for each, bring out more clearly, because of the contract, the difference between the two? Again: In the same contract, suppose, instead of there being an accidental fire, Doe conveys the house and lot to Smith, but obtains a reconveyance before the time set for performance; what are the legal rights of the parties at the different stages of this transaction? What are their equitable rights? Is it not common sense to finish our discussion once for all? Once the student has mastered the real significance of the phrase that "equity acts in personam," and has learned in the course on trusts the real nature of "equitable interests" in property, he is prepared to handle the problems thus raised in specific performance.

Permit one more illustration from the field of contracts, before I pass on to the fourth and last important field of equity which I shall discuss at any length. In the course on contracts we discuss with our students "assignments" of contract rights. This discussion turns out to be difficult for a student who knows no equity to understand. In addition, the instructor must postpone until the next year—usually leaving it for another instructor, in fact—the answer of equity as to the assignment of the right to specific enforcement of a contract and the reasons for the entirely different treatment of the problem by equity.

An examination of the chapter on "Discharge of Contracts" in any good casebook will show that the present state of our law in most states cannot be understood until one knows the views of the courts of common law, the views of the courts of equity, and those of courts operating under the reformed procedure where courts of equity and law are fused into one. Yet, as we discuss contracts as a purely legal subject, the equity side is treated inadequately and in a fragmentary way, and is usually never treated adequately anywhere else.

My proposition would be, then, that the assignment, performance, and discharge of contracts at law and in equity, should constitute one course, given preferably in the second year, and so arranged as to time that the course on trusts would either precede or accompany it—preferably the former. By contrasting and comparing the answers of law and equity, I am firmly convinced that not only would the points of view of each be more

clearly brought out, but the fundamental things in our system of law as a whole would be more firmly fixed in the minds of our students. Especially important, it seems to me, is such a method of handling the subject for students who are to practice in code states, where one court is empowered to administer both legal and equitable remedies enforcing its judgment under the statutes by procedure in rem, if that be desirable, whether the right enforced be legal or equitable.

In one of the most widely-used of the casebooks on equity today, there is a considerable collection of cases on "restrictive covenants" on property—covenants, that is, that do not "run with the land" at law, but are held to be binding in equity upon persons in possession of the land, unless they are bona fide purchasers for value. Here, again, it seems to me that a portion of what is really the law of property is taken out of its natural setting. A proper arrangement, I venture to suggest, would require the treatment of this subject in the course on property, in connection with covenants that run with the land at law, and easements. I believe this is done in many schools in the course on property, with the result that the equity course unnecessarily repeats ground already covered elsewhere.

4. Restitution

Another part of "Equity" as usually discussed relates to the subject of the "reformation and rescission" of contracts, deeds, and other instruments. In a separate course we find set forth the law governing so-called "quasi contractual" obligations—the "contracts implied in law" of the older generation of lawyers. It was, indeed, a great service that men like Ames and Keener did in detaching the subject of quasi contracts from contracts, and so revealing its real nature; but I am convinced that we shall not permanently treat it as a separate subject for the reason that, as I shall attempt to show in what follows, it is merely the application by a court of law of a far-reaching principle of equity. Even a superficial comparison of the contents of a course on "reformation and rescission" with those of a course on quasi contracts will reveal the truth of my assertion that we are dealing with two phases of one problem—the recognition of the principle that one man shall not unjustly enrich himself at the expense of another, which lies, of course, at the basis of all constructive trusts.

Consider the subjects in the equity course; they deal with the specific enforcement in equity of an equitable right to restitution—the surrender of rights which were obtained because of mistake, by fraud, misrepresentation, duress, undue influence, or in pursuance of an illegal agreement, etc. On the other hand, a glance at quasi contracts at once reveals that we are dealing very largely with

the very same topics, only now the question relates to the enforcement of the duty—really an equitable duty—to make restitution by means of a money judgment obtained in an action at law. A moment's observation reveals the same headings—e. g., money is paid or property is conveyed under a mutual or unilateral mistake of fact or law: Is there a duty to make restitution, to return the money or property? If so, can it be enforced only by an action at law of general assumpsit, leading to a judgment for money damages, or will a bill in equity lie to compel specific restitution? How do we to-day deal with this problem? If money is paid, we discuss the problem in quasi contracts. If real estate is conveyed under precisely similar conditions, we discuss it in "equity." Nor is this all. Our practice, if it be logically carried out, is even worse. If the property be personal property, not money, say a horse, or real estate, if the instructor in quasi contracts does his whole duty, he must ask whether a count at law for goods or land sold and delivered will lie. But he will then stop and leave the question of specific restitution of the horse or other property to be worked out in the course on "Equity." The result is that the teacher of Equity has to repeat over again the whole discussion of what are the kinds of mistake which give rise to a right to restitution—a waste of valuable time. Is it not time to recognize that we have here to do with only one right—the right to restitution—and that action of assumpsit at law and bill for specific restitution in equity are only different remedies for its protection? If, indeed, the common law differ with equity in some respect as to the kinds of mistake that give rise to this right to restitution, we shall discover that fact—if it be a fact—and the reason for its existence only by comparing and contrasting the two views.

Look at the case again concretely: Owing to a mutual mistake of fact, say as to the existence of a debt, Doe delivers to Roe in payment of the supposed debt a horse. What are Doe's rights? They may possibly be, at least: (1) A right to rescind as in the case of personal property obtained by fraud, and so to sue in trover or statutory replevin after a demand for return or perhaps without demand; (2) assumpsit for goods sold and delivered; (3) bill in equity for specific restitution. Shall we discuss the second problem in quasi contracts, the third in equity, and let the first (which usually is not discussed at all) take care of itself? Shall we not go over all these possibilities with the student once and for all, just as the lawyer has to do when his client comes to his office with a similar statement of facts? It is surely not necessary to go over in detail the various well-known topics—fraud, misrepresentation, duress, illegality, and all the rest—in order to see that in each we are dealing with a

right to restitution, enforceable either at law by an action of assumpsit or in equity in a suit for specific restitution, and that the sole distinction between quasi contracts and equity relates to the remedy, and not at all to the right.

By consolidating the course on quasi contracts with the appropriate part of equity, making really a course on the enforcement both at law and in equity of a large group of constructive trusts, at least one-fourth of the time now devoted to these subjects will, I am convinced after a careful estimate, be left free for other work. It will doubtless be found, I may say in passing, that some portions of quasi contracts should be dealt with in the course on trusts. If, for example, that course covers the right to follow in equity the proceeds of misappropriated property; even where the misappropriation is a tort, surely an adequate treatment would include "waiver of tort"; i. e., the right to sue in assumpsit for the return, not of the specific proceeds, but of an equivalent sum, where money or its equivalent was received.

In many fields we have already done this work of bringing together the discussion of legal and equitable principles and remedies as they relate to a particular situation, as, for example, in mortgages and in the law of persons. In the latter no one thinks of discussing the property rights of the married woman at common law merely, leaving it for the course in equity to describe the equitable principles governing the situation; and I doubt not that this is equally true of the law relating to infants—at least, if it is not, it ought to be.

The task of thus redistributing into their proper places these portions of what we call equity, or, as in the case of quasi contracts, of putting certain common-law subjects into the appropriate equity course, is one of no small difficulty. It cannot adequately be done in a hurry or by one man, but will require the best thoughts and efforts of at least a whole faculty working in co-operation for a considerable period. It means ultimately the preparation of new casebooks, with the necessary reworking of the entire field from a new, but at the same time fascinating, point of view. One problem to be settled will be as to the best method of introducing the student to equity and its method of procedure. Whether this should be done in connection with some subject, such as "Uses" in the property course, or, as I think more likely, in a course dealing historically with the courts of common law and equity, their jurisdiction and characteristic modes of procedure, and the relations of them all to each other, all this will have to be worked out; but it is not within the scope of my paper this evening to attempt the solution of all the difficult problems involved in this rearrangement of the courses in equity and related subjects.

But, I hear some exclaim, shall we not lose our equity by so doing? Will the characteristic features of equity not be lost sight of by this division of the subject? That will all depend upon the skill with which it is done. Let us see what the distinctive things about equity are that might possibly be lost sight of in this process. First, equity acts "in personam." That surely would never be forgotten, and in fact the constant contrasting of the legal with the equitable remedy as applicable to the same state of facts would serve most emphatically to emphasize this. Second, equity retains for the judge or court a residuum of discretion greater than that belonging to the common law judge. As Lord Eldon said (in *Gee v. Pritchard*, 2 Swanston, 402), the doctrines of equity "ought to be as well settled and as uniform almost as those of the common law, laying down fixed principles, but taking care that they are to be applied according to the circumstances of each case." This discretionary element, the less hard and fast application of a rule as a rule, the taking into consideration of the "balance of convenience," must at all events be preserved.

But, taking a concrete case: Will not the comparison of the legal rule that, given a nuisance, an action at law for damages will always lie, with the refusal of equity to enjoin the farther maintenance of the nuisance unless the "balance of convenience" is in favor of the injunction—will not, I say, the comparison of these two things constantly over and over again serve to emphasize and so to preserve this feature of equity? A third characteristic feature of equity is that it has been the great legal reformer; it is more ethical than the law. Well, will not the constant contrasting of the two systems, principle by principle, rule by rule—the less ethical view of the common law upon some particular topic with the more ethical view of the court of equity upon the same topic—will all this not serve to emphasize this feature of equity more clearly than ever before? In the hands of a skillful teacher it seems to me that it would.

As our learned chairman has so well pointed out in his essay upon "The Decadence of Equity" (5 *Columbia Law Review*, 20), the consolidation of courts of law and equity into one, with the abolition of differences in pleading, has led to a tendency to unduly legalize equity. But, as he also says, the remedy is not "to condemn the reform which has given us one procedure instead of two. * * * To declaim against the fusion of law and equity to-day is * * * futile. * * * The moral, I take it, is that we must be vigilant. * * * We must fight for equity." So, I should say, the fusion of law and equity in the legal curriculum in the manner suggested will not, if we are vigilant, if we "fight for equity," result in an undue legalization of equitable principles and rules, but

rather, in the hands of a master of the subject, would serve to emphasize, and so to preserve, those characteristic features of "equity" which must be preserved, if our system of law is to meet the needs of society in the future.

Discussion

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Is it true, as Mr. Cook says, that American law schools are following "the belated and reactionary course of procedure of acknowledging the existence of equity as a system distinct from law"—meaning by "a system distinct from law," as I understand the phrase, a body of rival, clashing law, as distinguished from a body of law that forms part and parcel of the whole law of the land, viewed as a single, harmonious code? As proof that they are, the fact is cited that they announce in their catalogues either "Equity" or "Equity Jurisdiction" as a subject by itself.

Obviously such an announcement in the catalogue of a law school is not of itself enough to prove the law school in question acknowledges equity as a system distinct from law. The idea of equity as a system distinct from law is, and always has been, of course, a wrong idea, not in accord with the facts of the actual administration of justice by the courts. I am not aware the idea ever was taught in any American law school; but, if it ever was, the idea was exploded long ago, both inside and outside American law schools.

To tell what American law schools now are doing along the line of this idea, we must look at the contents of the course on Equity or Equity Jurisdiction as disclosed in the casebooks commonly used. What part of the law is commonly included in the course on Equity or Equity Jurisdiction in our law schools?

The historical line of division between "law" and "equity" is declared and preserved by section 16 of the federal Judiciary Act of 1789, re-enacted in the Revised Statutes and in the recent federal Judicial Code. The section declares: "Suits in equity shall not be sustained * * * in any case where a plain, adequate and complete remedy may be had at law." The line of division deals with remedies only, not with subject-matter, or with the courts that administer remedies.

Speaking broadly, the remedy at law, except in actions for the possession and title to land, is compensation for the wrong

done; i. e., money damages. The remedy in equity is compulsion and coercion of the wrongdoer to do or refrain from doing what the law commands him to do or not to do.

The remedy in equity of compulsion and coercion was at its first establishment, has remained throughout the centuries, and is now, as Sir Henry Maine, said, "one of the agencies by which law is brought into harmony with society." A skillful, able, and honorable judicial manipulation of the remedy through a long course of years has produced three kinds of law: Pure substantive law, like the law of trusts and mortgages; pure procedural law, regulating the administration of the remedy, like the law that a party cannot have the remedy unless his hands are clean; and what may be called twilight-zone law, that nobody is able to classify as substantive law or procedural law, is partly one and partly the other, is probably on the way to becoming substantive law in the law of torts, property, contracts, and quasi contracts, but has not arrived at its final destination, and is actually administered by the courts with special reference to its origin in equity, or as law regulating the application, operation, and effect of the remedy of compulsion and coercion.

The remedy of damages and the remedy of compulsion and coercion are not concurrent remedies, and never were. Aggrieved parties cannot have the one or the other according to their taste and choice. Sometimes the remedy of compulsion and coercion is the only one available, as in cases of trust and mortgage. In cases of torts and breaches of contracts, aggrieved parties always may get the remedy of damages, but cannot always get the remedy of compulsion and coercion to do or not to do what the law commands.

The course on Equity or Equity Jurisdiction includes the body of rules enforced by the courts regulating the application, operation, and effect of the remedy of compulsion and coercion to redress torts and breaches of contract. Plainly, the inclusion of this body of rules under Equity or Equity Jurisdiction, as a subject by itself, is not "acknowledging the existence of Equity as a system distinct from law." And, plainly, it is not "unscientific," either "from the point of view of analysis" or "from that of educational expediency," to include this body of law under Equity or Equity Jurisdiction as a subject by itself.

The division of all law in general into substantive law and procedural law is not unscientific. And therefore the division of the law of torts and the law of contracts into substantive law and procedural law cannot be unscientific. The rules enforced by the courts regulating the application, operation, and effect of the remedy of compulsion and coercion to redress torts and

branches of contracts constitute a body of procedural law. The course on Equity or Equity Jurisdiction separates these rules from the substantive law of torts and of contracts, in much the same way the course on Damages separates the rules regulating the measure of compensation for torts and breaches of contracts from the rest of the law of torts and of contracts.

The title of the courts, "Equity" or "Equity Jurisdiction," may be translated out so as to read: "The remedy of compulsion and coercion as applied to torts and breaches of contracts." The word "jurisdiction," in Equity Jurisdiction, denotes, not power to hear and decide a case, but power to administer the particular remedy of compulsion and coercion; and the word "equity" points to the source of the rules regulating the application, operation, and effect of the remedy in the higher principles of conscience and morals.

While the major part of the body of law included in the course on Equity or Equity Jurisdiction is procedural law, yet the course also includes a body of law that I have called twilight-zone law, neither procedural nor substantive, some of which, perhaps, ought to be classified as substantive law. Subjects governed by rules of this twilight-zone law are emphasized by Mr. Cook. The chief of these subjects are: Equitable waste, restrictive covenants running with the land in equity, the doctrine that the buyer is the owner in equity from the time of the making of the contract, the doctrine of the essential stipulations of a contract in equity, specific performance by and against assignees, reformation and rescission of contracts, and some others mentioned, to which may be added the equitable doctrine of part performance.

To place these subjects in their proper setting, as it is said, the proposal is to eliminate the course called Equity or Equity Jurisdiction, throwing some of it into a new course, to be called "The Assignment, Performance, and Discharge of Contracts at Law and in Equity," some of it into another new course, to be called "The History of the Courts of Common Law and Equity, Their Jurisdiction and Modes of Procedure," and distributing the rest of it through the courses now called Torts, Property, Contracts, and Quasi Contracts.

In a scientific, orderly arrangement of the whole law, taking as a basis of classification the difference between substantive law and procedural law, it may be that many or all of these isolated subjects mentioned would fall under the head of substantive law, and hence under one or another of the present courses called Torts, Property, Contracts, and Quasi Contracts, rather than under the present course called Equity or Equity Jurisdiction. But the proposal is not to take these subjects out of Equity or Equity Ju-

risdiction, and place them in their appropriate places in the courses on Torts, Property, Contracts, and Quasi Contracts, but to place some of them in their appropriate places in those courses, putting the rest into two new courses. In point of scientific or orderly arrangement, it is hard to see just wherein, or why and on what basis of analysis and classification, the proposed plan excels the present one.

It is said the proposed plan excels the present plan in point of "educational expediency." No test of educational expediency is laid down. But educational expediency must have reference to students in American law schools to-day, who are studying law at its source in the decisions of the courts and not in text-books. One way, therefore, to test the matter of educational expediency, would appear to be to inquire whether the body of law included in the course on Equity or Equity Jurisdiction is actually administered by the courts as a part of the substantive law of Torts, Property, Contracts, and Quasi Contracts, or as law regulating the application, operation, and effect of the remedy of compulsion and coercion, as distinguished from the remedy of damages to redress torts and breaches of contract.

Let us first look at the English courts, to see how they are actually administering the body of law included in our courts on Equity or Equity Jurisdiction. Since the English Judicature Act of 1875 the two remedies of compulsion and coercion and of damages have been administered by a single court under one form of action. This has produced no change in the way justice is administered under the body of law included in our course on Equity or Equity Jurisdiction. All of the rules are still applied and enforced as they always were by the English courts, with special reference to their origin in equity, or in the law regulating the application, operation, and effect of the remedy of compulsion and coercion.

In his lectures on Equity, Maitland predicted in his second lecture that one effect of the English Judicature Act of 1875 would be that "the day will come when lawyers will cease to inquire whether a given rule be a rule of equity or a rule of common law; suffice that it is a well-established rule administered by the High Court of Justice." This day was to arrive, Maitland thought, through the operation of subsection 11 of section 25 of the Judicature Act of 1875, which says: "Generally, in matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of common law, the rules of equity shall prevail." In his twelfth lecture Maitland says this eleventh subsection of section 25 "has been law these thirty years, and has produced very little fruit," of the kind Mait-

land predicted in his second lecture. The fruit Maitland predicted was what is commonly called a "fusion" of law and equity, or an obliteration of equity, or, as Maitland put it, a judicial administration of rules of equity without reference to their origin in equity.

The effect of the English Judicature Act of 1875 has been to reveal or unveil to everybody in England the true nature of the rules of equity included in our course on Equity or Equity Jurisdiction as rules regulating the application, operation, and effect of the remedy of compulsion and coercion as distinguished from the remedy of damages. The isolated subjects of what I have called twilight-zone law in our course on Equity or Equity Jurisdiction, where fusion in Maitland's sense might be expected, are taken up by him in his twelfth lecture, and English-decided cases are examined, producing very little fruit, as he says. Mr. Hogg, an English barrister, writing in 12 *Juridical Review*, 244, in 1910, under the title "Law and Equity—The Test of Fusion," says he can find but one case which he thinks answers Maitland's test of fusion; i. e., where justice is administered by the courts without specific reference to any distinction between law and equity. The case cited by Mr. Hogg is not very much in point, and Mr. Ingersoll, in an article to which I shall refer, appears to take that view of it.

When it is borne in mind that the distinction between law and equity is the difference between the remedy of compulsion and coercion and the remedy of damages, it is difficult to see how justice ever can be administered by the courts without reference to any distinction between law and equity, under a right understanding of those words. Considerations of sound public policy prevent an extension of the remedy of compulsion and coercion to all wrongs, as, e. g., breaches of contracts for purely personal services, and the remedy is likely to remain for a long time as an exceptional, superior remedy, entailing peculiar consequences, as, e. g., the consequence that a buyer of real estate may be regarded as the owner for many purposes from the date of the contract, a consequence that cannot be explained by any law regulating the making of contracts separate and apart from the remedy of specific performance.

But when a rule of Equity—i. e., a rule regulating the application, operation, and effect of the remedy of compulsion and coercion—gets completely disentangled and separated from the remedy, standing as an out-and-out rule of substantive law, then it is "fused" into the law, and may be administered without reference to its origin in equity, as Maitland puts it. The rules regulating the reformation and rescission of contracts on mistake and fraud, perhaps may

be, and perhaps ought to be, administered by the courts of England and of our "Code states" as rules of substantive law governing the subject of mutual assent in contracts; but they are not so administered without reference to their origin in equity, or in the formal mode of procedure for reforming and rescinding contracts.

Now let us turn to the United States.

Mr. Ingersoll, Dean of the Law School of the University of Tennessee, in an article entitled "Confusion of Law and Equity," 21 Yale Law Journal, 58, in 1911, says the remedy of compulsion and coercion is administered by a separate Court of Chancery in seven of our states, on the equity side of a single court in fourteen of our states and in our federal courts, and that all the rest of our states are so-called "Code states," where, as in England, one court may administer both the remedy of compulsion and coercion and the remedy of damages under one form of action, as the nature of the case and the ends of justice may require. But nowhere in the United States, according to Mr. Ingersoll, has there been anything like a "fusion" of law and equity under Maitland's test of fusion, or any other test of fusion that may be applied.

Everywhere, then, throughout England and the United States, the body of law included in our course on Equity or Equity Jurisdiction is administered by the courts as they always were; i. e., as rules regulating the application, operation, and effect of the remedy of compulsion and coercion, or with special emphasis on their origin in equity. Under the test of the way justice is actually administered by the courts, then, it cannot be said our course on Equity or Equity Jurisdiction is educationally inexpedient.

There can be no question, whatever, as Maitland says, that the modifications of the law of contract, brought about by constant applications of the remedy of compulsion and coercion to redress breaches of contracts, should be studied and learned as a part of the law of contract. It is very hard indeed to see how a student in our course on Equity or Equity Jurisdiction can forget that there is a contract or a tort at the bottom of the case in hand, or how he can forget that specific performance has relation to contracts, as Sir George Jessel said coals have relation to a colliery.

Whether the proposed plan of breaking up the course on Equity or Equity Jurisdiction would be an improvement on the present mode of testing and emphasizing the body of law included in it seems a matter of pure speculation or guesswork.

Our present course on Equity or Equity Jurisdiction rests on the analysis of Langdell, who grasped and emphasized the key to the subject in the remedy of compulsion

and coercion, just as Oliver Ellsworth grasped and emphasized it in the federal Judiciary Act of 1879. Langdell has said somewhere that Equity Jurisdiction is not a scientific part of the law. It may be added that it never will be scientific until it is dead, like the Roman law in Justinian's law book, when commentators may mold it to suit their own ideas of science. Mr. Cook's paper, as it seems to me, with due respect, unduly magnifies the importance of a few prophetic sentences in Maitland's lectures on Equity about the fusion of Law and Equity. Maitland does not say, either directly or by inference, that American law schools are following "the belated and reactionary course of procedure of acknowledging the existence of Equity as a system distinct from Law," or that "our American treatment of Equity is unscientific, both from the point of view of analysis and from that of educational expediency," and he would not say it, because Maitland was a lover of truth, and the statements are not true. Maitland's lectures, rightly read and interpreted, are the sermons of an English Paul, spreading the gospel of the American Langdell.

The suggestion of more attention to the history of the courts of common law and equity, their relations, their modes of procedure, and their place in the government, is a good one. A realization and appreciation of the way the remedy of compulsion and coercion was used to bring the law into harmony with society, as Maine said, is essential. The remedy may be used by the courts legitimately for the same purpose today, consistently with our indispensable and just rule of precedent and the constitutional prerogatives of the Legislature. And there is no reason whatever why the remedy of damages may not be used as an equally potent agency for the same purpose. The chief value of the English Judicature Act of 1875 and of American Codes, allowing the two remedies to be administered by a single court under one form of action, is that it puts the two remedies on an equal footing, giving the remedy of damages a fresh start, so to speak, giving lawyers and judges more freedom to fuse the liberal and daring, but consistent and coherent, spirit of equity into the administration of the remedy of damages, exploring and expanding the fountains of the law in the best feelings, manners, customs, and traditions of the people, and giving less attention to the rivulets. Whether English and American lawyers and judges have risen to the opportunities created for them by the Legislature is outside our subject. But, I repeat, American law schools are not belated and reacting in their classification of our mode of teaching and emphasizing the body of law administered by the courts under the axiom of equity, and

I cannot see where or why the proposed changes are a real and substantive improvement.

Albert M. Kales, Northwestern University Law School.

Professor Langdell had an interesting way of getting his ideas accepted by his colleagues; that is, if I may guess right, when he had decided that a thing was the proper thing to do, he spent very little time trying to persuade anybody to do it. He went and did it himself. Having done it himself, having taught with the casebook which he constructed, the question was: Could he beat the other fellows out? He did, and that was the foundation for his casebooks. Having won, naturally many others came to his assistance, and the result was a triumphant one.

The same may be said of many suggestions that have been made by other gentlemen in other years, and also Mr. Cook. The question is: Will his cock fight? Before we can know that, we have got to have him in the ring. So it seems to me that we ought to encourage Mr. Cook in every possible way. Instead of throwing cold water on his scheme, or telling him that it ought not to be done, or that it cannot be done, we ought to join together and urge him in every way possible to get up—in partial effect at least, because he cannot go over the whole field—get up some course, and persuade his faculty to permit him to undertake an experiment along the lines which he sincerely believes in. When that is done, and when it has been used, and when perhaps others besides himself have attempted it, we will know whether his cock can fight or not. That will be the test.

Practice Courts

By WILLIAM G. HASTINGS

Dean of the University of Nebraska Law School

If Socrates had continued in life from his day to our own, and had kept up his search for the perfect proficient in practical arts of any kind, doubtless he would still have to confess his failure. At all events, it is not at all likely that, among the professed law teachers assembled here, any one would offer himself as such an absolute proficient, complete and irreproachable, without fault, failing, or blemish, to serve as a model, as well as preceptor, in the training of our students for the practice of their profession.

Generally we teach the law, and not its application. If the point lies in the application thereof, there will be a lifetime of

application to perfect the student, while we must, in a scant three years, of thirty-six weeks each, make sure that he is informed as to the precepts.

Whether we admit it or not, such is really the point of view of most of us. It has its justification in the fact that the effective way to learn to do anything is to set about doing it, and the practice is bound to come. The law school lad, who starts out to earn his living by the application of what he has learned, will presently not lack experience, and, we are prone to say, let us have him well filled with the doctrines of substantive law, and the practice will take care of itself. Somewhat rarely we say this outright. More often we act upon it without saying it, or while saying the opposite, with the result that our doctrines of substantive law are like the Latin grammar that too many of us once learned, and carried as a dead load in our heads for examination purposes only, and without finding it a practical help towards the real use or comprehension of the Latin language.

For how many a student has not experience shown that excessive addiction to the grammar too often completely blocks the way into a use of the language. Such a fear of going wrong, and such an apparent impossibility of getting things right, is created, that all movement or disposition towards making effective use of his knowledge is completely destroyed. The language is condemned to remain for all time to that student a mere cipher, intelligible only, when by laborious application of his dictionary, used according to some of the simpler of the grammar rules with which he is loaded, he has substituted an English combination of words for those given him in the cipher tongue. Of course, oral use of such a cipher is out of the question.

We run the risk of producing a similar state of mind on the part of our students with the complicated rules of law. Of course, these rules constitute a system, and, in order to work together, must be somewhat consistent. The conscious application of them all at once, however, involves having them all at once in the mind, and that is plainly an impossibility. If we get too large a quantity of those rules accumulated in our minds, in advance of the attempt to apply them, we shall certainly produce that "diffidentia" which the second section of the first title of Justinian's Institutes warns us against, and declares it is the chief purpose of that treatise to enable the student to avoid.

If we turn somewhat early to practice, and get the blessed aid of habit to show us how to go ahead, by merely following mechanical formula, up to the point where a controversy arises, the attention can be given to the single question there presented, and it can be dealt with easily and successfully, if only we are on the right side of the question

of fact; and thus we escape that "diffidentia" which would persuade us that, to successfully apply any part of the law, we must keep the whole system in mind.

These rules of substantive law, moreover, which our courts recognize, and our students must get from us, where did they first obtain authoritative recognition and expression? Professor Maitland and Sir Henry Maine were two of the same trade who seldom enough agreed; but Professor Maitland, at the beginning of his brief series of lectures on the common-law actions, quotes with strong approval Sir Henry's declaration: "So great is the ascendancy of the law of actions in the infancy of courts of justice that substantive law has at first the look of being gradually secreted in the intricacies of procedure, and the early lawyer can only see the law in the envelope of its technical form." This is only Sir Henry's way of saying that in the early days the only law men knew was the law of practice, and the lawyer who did not know that knew none.

Beyond question, men began by having disputes. The requirements of their own interests, and those of the community to which both parties belonged, produced an adjusting tribunal. The tribunal, led thereto by the greater ease and comfort of a beaten path, adopted forms of procedure, and adopted them with a rigidity of which the modern civilized man has slight conception. The same tendency to follow a beaten track, by means of which both men and horses can be effectively broken in to useful employment, led the tribunal to follow its own precedents, already deeply molded by formalism, and so, by persistent repetition of those precedents, rules of substantive law emerged.

The comprehension of any such result of evolutionary processes can be reached only through following the history of those processes. No man will comprehend the rules of our law, except by following the steps of its growth. This is none the less true when we find it disguised as an act of legislation. The latter is apparently something consciously made, a mechanism adopted to satisfy some given purpose. Where we find the law taking this shape, our application of history is to the elements composing it, to the materials out of which it is made, and to the will and intelligence putting them together. It is true a mere mechanism has no history. It has a purpose; it was put together out of materials whose life, if they had any, was destroyed so far as that life tended towards independence, and so to interfere with the mechanism's purpose. So long as the combination answers such purpose, it holds together. Whenever, from inability to serve, or from lack of further need of the service, it is no longer desirable for that purpose, it is more or less promptly broken up into its component elements. The organic elements which went into it, and

the intelligence which devised and controlled it, had a history, because they had life and grew. It had none, because its life was destroyed to serve its end, and its existence from the beginning was simply a process of inevitable dissolution. Something of the same sort happens when law ceases to be a result of unconscious adaptation and spontaneous growth, and becomes a matter of conscious construction. The power to give life is not in our hands in lawmaking any more than it is in the producing of other mechanisms. To take out of the social elements around us the necessary parts to form a new institution, or set of institutions, is to stop that far the spontaneous and hitherto free activity of those human elements, and to require of them henceforth to act as machines. They can only do this by acquiring the necessary modification of their habits, and habits result from practice. That practice must come at the right point, and be directed to the creation of the correct habit, and the intellectual process which lies at the base of such action, as of all mechanism, is analysis.

It is just as certain that thorough analysis is necessary to effective practice as it is that complete history is necessary for complete comprehension. To understand this complex growth, we must have mentally followed its development; to make use of it we must have a thorough analysis of it, and get familiar with its parts as parts for use. We must be able to make an instant and successful distinction between the essential and the unessential, the vital and the incidental, portions of its activity. Successful practice, we are told with sufficient frequency, grows out of elimination of all false movements. All the teachers of efficiency in all lines are agreed as to this, and our analysis must go far enough to enable us to use the right part at the right time, and to turn the attention to another one at the instant when the latter is called for. It is only by successful analysis, reduced to practical habits, that as complicated an operation as the carrying forward of an action at law is at all possible.

The two processes, the historical synthesis for the sake of comprehension and co-ordination, and the analytical one, for purposes of immediate use, if rightly adjusted, mutually assist each other; either, without the other, will largely miss their special purpose. The same practical lad who regards his Latin as a girl's study, and sees no hope of getting through it any direct connection with practical things, or of getting any such use of it as will be of advantage to him, through ordinary grammar study, is liable to achieve a means of communication with foreign-born playmates earlier than any one else in the school. If he was forced to put Latin to some practical use, and acquired through such use a slight grip upon its vocabulary, the use of grammar and dictionary to open

up and extend such knowledge would be at once apparent to him. He would no longer despise and hate such study, and there would be at least a possibility of some success with it.

The law student commencing his course has often no sufficient practical knowledge of the courts of this country, and of their actual working, to make general statements of legal precepts intelligible and convincing to him. In opening a general course on the common-law system and its history for first-year students, I have usually started with an inquiry as to how many of them had ever actually attended the trial of an action in any court of law. I have been surprised at the frequency of the answer: "I have not." They are a living testimony to the truth mentioned by Sir Henry Maine that courts and compulsion, where they are most strikingly successful, push themselves far into the background by creating a law-abiding habit, which does away with the need of their intervention. "The great difficulty of the modern analytical jurists, Bentham and Austin, has been to recover from its hiding place the force which gives its sanction to law. They had to show that it had not disappeared, and could not disappear, but was only latent, because transformed into law-abiding habit."

If these lads are to be shown convincingly the substantive rules of law, they must be initiated speedily into the practical application of them. They must be made conscious of the existence of those rules which they have all their lives been unconsciously obeying. If we are to have success in dealing with them, we must take them back to the situation described as that of the East Indian law student, for whom "the law and the courts have an importance which may be measured by the circumstance that in many parts of India youths learn the text of the penal and procedure code, in daily lessons, as did the young Roman of Cicero's time, the *Cantilena* of the Twelve Tables."

Another consideration in favor of energetic use of our practice courts is the proposition that some of the best known and most used distinctions in law are matters of degree and not of kind, must be learned by experience, because they do not result from definition. What is the test of the constitutionality of an act of legislation attempting to regulate uses of property? Take, for instance, the question lately pending in the Supreme Court of the United States, as to the constitutionality of our Lincoln, Nebraska, ordinance for dollar gas. That court refused to pass upon the questions at all until further evidence should be produced. The judges had the ordinance before them; they had the federal Constitution, in reliance upon which the gas company had appealed. Was the ordinance a violation of the fourteenth amendment? Not unless the rate was too low to give reasonable com-

pensation for the use of the gas company's property invested in the business. Was the ordinance regulation, or confiscation? The court said that under the testimony already taken it could not tell, and sent the matter back for the obtaining of more definite information as to the relative size of the compensation allowed and of the necessary expense bill for the furnishing of the gas. This is evidently a relation of pure quantity, calling only for skill in ascertaining and measuring expense.

In any close question of constitutional law, have we anything more? Is it not always a question of the degree of departure from the constitutional standard which the legislative act in question makes, whether this departure is broad enough to be distinct and indisputable? The standard, itself, is adjusted to varying public needs, or, perhaps, it should be said, to varying perceptions of public needs. The limit of the state's authority to enact legislation interfering with the use of constitutionally guaranteed property is the case involving and supporting the latest stretch of such authority, modified by any new perceptions of the need, or lack of need, of so much, or of more, authority on the part of the state, in order to meet real public wants.

Take another absolutely technical question, free from any taint of the politics with which our constitutional cases are reproached—the application of the writ of injunction to cases of trespass or nuisance. Is there any difference in the nature of the wrong in those cases in which the writ is allowed from those in which it is refused? Is it not simply a quantitative question of the extent and seriousness of the threatened danger? If that is not serious enough to warrant the injunction, then the threatened injury is not irreparable, and a remedy in damages with trial to a jury is the only one allowed you. To be sure, we say in the one case that the injury is irreparable, and in the other that it is not; but at a glance at the decided cases it will be shown that it is no question of absolute irreparability, but merely one of degree, and that degree is to be learned from familiarity with cases and their facts in practice, precisely as the famous chef learns to season his soups.

Take the whole question, indeed, of the existence or nonexistence of the remedy in equity. It is, we tell inquirers, a question of whether or not there is a remedy at law, or, if there is, whether or not that remedy is adequate. That, again, is not an absolute inadequacy; it is merely a relative one, simply a matter of more or less. There is no room here for any logical distinction of kinds. Whether or not your own or your adversary's case really calls for equitable consideration is to be determined, if the matter is really close enough to the line for experts to differ about it, in just the same manner in which experts in another field

determine whether or not the sample of wheat presented for testing shall be graded "No. 2." The one is as easy as the other to settle by mere definition and attempted distinctions of kind.

Of course, we deal with plenty of matters in which the distinction of kind applies. The empiricist, who knows no such general distinction, and applies none but degree tests, gets his scorn of the theoretician paid back to him when he tries to apply his degree tests of experience to things so unlike as not to be thus comparable, not homogeneous enough to be subjected to any single measure. We are not without logical, as well as quantitative, distinctions in law, and we must learn to apply both, and apply them with the rapidity and sureness which only habit gives. It seems unnecessary to repeat that habit comes only from practice.

But it seems sufficient to leave the absolute necessity for some induction into practice to speak for itself. A technical school, which does not succeed in showing how to do something, would certainly seem to be "Hamlet" with the part of Hamlet omitted. If experience did not absolutely show the contrary, we would all say that there is no danger of the law teacher forgetting that his general rules of substantive law not only arose out of the practice adopted in the tribunals, but were formed and organized for the sake of such practice, in order to perfect the work of those tribunals, and have no other excuse for their existence.

Any instructor on any subject must have learned, at the very beginning of his experience, that, while ideas can be conveyed and emotions aroused by indirect methods and suggestion, habits are only reached by direct insistence and persistence, aimed immediately at the sought for proficiency. In other words, where we want practice, we want practice, and not something about practice, and we want it as absolute an imitation of the genuine article as can by any possibility be obtained, except in those cases where it can be made better and more effective for our purpose by some departure from the actual model.

It is believed that genuine improvement in our schools in this respect will commence as soon as a deeper appreciation of the possibilities of the work in this direction is reached by the instructors. To a large extent, work along this line in the schools of the association seems to be left to the initiative of the student. He is invited to form law clubs, and by almost wholly voluntary efforts through them to get familiarity with court practice, somewhat after the manner of the voluntary literary and debating societies of the colleges of arts, which were stronger in those colleges in years gone by than they are now. In those societies energetic and ambitious students did much to qualify themselves for the actual work of the hustings and the

forum. Doubtless, such voluntary work is valuable in the law school, and for that portion of the students who thus voluntarily engage in it with energy it might easily prove more valuable than would any required exercises. The broadening and extending of the courses in the arts, the enlarging of classes, and the multiplying of interests for the student in those institutions, has undoubtedly weakened the literary societies, just as the broadening and strengthening of the curriculum of the law school has too often drawn attention away from the practice courts.

At our own institution the practice court work was at first left to voluntary associations, assisted more or less by the presence and encouragement of the instructors. It could be somewhat safely so permitted, because the school in its beginning was organized by the University authorities as a successor to a voluntary association of students from the law offices of the state capitol, who had organized themselves for united legal study. The Regents of the University were authorized to form a law college, and did so, with a view to absorbing this association; and it was absorbed. Later, the plan of organizing courts in imitation of the actual Nebraska courts, with students for judges, and making it necessary to successful graduation that a certain number of cases be carried through these imitation courts, was adopted. Instructors were supposed to be in attendance at all sessions, and the lawyers conducting cases were at liberty to draft the instructor in the topic involved by their case, if they saw fit, and require his attendance. Two years ago, the plan was again changed by the substitution of instructors for students as judges of the *nisi prius* courts. A law professor was also placed at the head of the Supreme Court, assisted by the requisite number of students, for the hearing of appeals.

This step was found necessary in order to secure the performance by the whole body of students of the previous nominal requirements of such work. With the advent of instructors as *nisi prius* judges, the attendance of the first-year men as jurors and witnesses, nominally compulsory before, became so in fact. Under this plan the work shows an improvement; but there are still too many students who do it perfunctorily, or find grounds for avoiding it altogether. The requirement at the present is that one case, at least, shall be taken by each student of the second-year class through all the courts, commencing with justice of the peace, and proceeding by error or appeal through the district court to the Supreme, and that each third-year student shall take at least two cases through the district court, and one of them, at least, by way of appeal, to the Supreme Court. Associations of not more than two partners are allowed, and each partner

is given credit for cases conducted by the firm. Not unfrequently an intelligent man and a good student frankly says that he has no intention of engaging in actual practice of the legal profession, and has only taken the course for purposes of business and citizenship, and that he does not see why he should be required to spend his time in exercises preparatory for such practice. Students with this object are not uncommon with us, and I imagine not much less so in other institutions, if one may judge by the percentages of their graduates who actually do get into practice.

In Nebraska, during eight years that I have been in the University Law School, about fifty per cent. of the matriculated law students have completed the course, and of this fifty per cent. probably forty per cent. become and remain practitioners. The others either do not attempt to practice, or do not persist long enough to get fairly into the work. In this situation, what should be done with those who do not intend to even attempt practice? In most cases they should not be urged to engage in it. They can do better. Sometimes, however, it is a clear case of the "diffidentia," which the Institutes talk about, and Erskine's situation of dire need on the part of his family is not there to overcome it. It might be avoided or neutralized by a well-directed system of practice court exercises, and sometimes it is.

I have known at least two cases where men asked excuse from practice court work, on the ground of nonintention to practice, were urged into it, as being a valuable discipline, and one which they had undertaken, with full knowledge in taking up the law course, and also on the ground that, whether they became practitioners or not, they would surely become citizens, subject both to jury service and to actions at law, at the hands of their fellows, and would certainly find use for all the knowledge of court procedure they could possibly acquire. They took up the work with such interest that the game became attractive enough to make practitioners out of them.

Those who have already professional ambition ordinarily require no urging to take up this line of work. They usually do so with energy. In every recent graduating class there have been several men with much more than the required practice court work to their credit. There would have been still more of such men, except for lack of time on the part of the instructors. It is only necessary to convince them that it helps towards the attainment of their object, and show them that it is an advantageous employment of time and energy. Whatever the experience of others has been, among those under my observation who have engaged in this mimic struggle, there has been no lack of interest in it, or of concern about its outcome. A distinguished gentleman in my own state, who attacked in the public press

the whole plan of school training in their profession for lawyers, exhibited ignorance of the actual work of the schools in no other respect so much as in representing that the moot court trials were invariably a farce, and so regarded and treated by all participants.

As a matter of fact, the rivalry of contestants at these hearings is often of the keenest. The desire to win is such that here, as in actual contests of the forum, the difficulty is to secure a fair compliance with the rules of the game. Men will continually try to get into the evidence matters which were not included within the limits of statements of testimony furnished them. When convinced that the real issue is going against them, they will try as hard to raise a false one as any full-fledged advocate in an actual trial. To be sure, this sort of interest is confined to those, as before suggested, who aspire to be practitioners. Their interest in it shows that they recognize that it is a direct step towards the object of their ambition, and, so far, that the practice court goes towards its desired end.

That end is a plain one, if not easy of attainment. It is to get rid of the diffidentia of the young practitioner, and make his admitted knowledge of rules of substantive law immediately available to himself and to clients in actual contests of the forum. To this end the law school must organize the most perfect imitation of an actual court of justice, and of actual contests therein, over legal doctrines, and operative legal facts, that is practically possible for that school under its conditions. It must get this imitation court into actual and interesting operation.

I am not undertaking to say that there is only one way to do this. I am not even undertaking to say that there is any way to do it with complete success. The actual administration of justice reaches only to such an approximation of complete success as is better than continued fighting. The imitation court will be only an approximation to the actual one; but, if it is avowedly an imitation of the neighboring real one, its frank young critics in the student body can be depended upon to recognize and indicate the particulars in which it most manifestly falls short. They can be relied upon to make comparisons with small charity for any marked shortcomings.

This seems of itself to be a sufficient reason for making the practice court as directly as possible in imitation of the real local one. The objection will come that we have students from different states, going out, when they have finished their course, to different systems of practice. Somewhat careful consideration of this suggestion leads to the conclusion that it is not a vital objection to organizing a school practice court in the closest possible imitation of the local, actual courts, and following such local procedure. Talking a few days ago with a

former student, who has achieved distinction in practice in a distant Western state, he declared his belief that the fundamental elements in practice are the same in all our states. Specific rules and forms of pleading vary somewhat, as the student of statutes on that subject, of course, knows. They do not vary nearly as much, however, in real meaning and force, as by their forms they seem to.

Everywhere in this country court procedure is a product of analytical treatment of old common-law and old equity practice, somewhat variously combined, but all intended to take away the unnecessary and unessential, and preserve only what is vital to the vindication of rights. The general uniformity of our substantive law, which makes the decisions of any one of our jurisdictions persuasive, and as to new matters frequently decisive, authority in any other jurisdiction, has under it an even more pervasive uniformity in the principles of practice, as my far Western friend declared. To be sure, the use of many specific provisions of statutory origin as to particular points of practice, and especially the attempt to adopt complete codes of procedure, while declining to codify the body of law, has particularly emphasized among American lawyers of this generation the distinction between adjective and substantive law. It has also tended to emphasize the conscious differences in details of practice. It has been powerless to disturb the underlying uniformity.

The separation of adjective and substantive law is by no means complete, and that fact helps maintain uniformity of practice. The substantive law, not only began in a rigid application of rules of procedure, but is still in this country constitutionally clamped to them. Due process of law is still required by state and federal Constitutions. Besides this somewhat flexible and indefinite requirement, trial by jury in accordance with the rules of the common law is everywhere guaranteed. Making a jury demandable, instead of waivable, has largely done away with its use in England, but would certainly have no such effect in this country, until we can induce our courts as triers of fact to show something of the promptness in decision which comes from the jury. Probably, too, it would be necessary to eliminate some demagoguery from American legal practice and practitioners.

However it may be, there is no symptom to-day, in our part of the country, of any effectual supersession of the use of the jury. Is there any state in the Union where serious modification of the constitutional guarantee of the right to its use, would have any chance of prevailing? When it really goes, it will be because we have succeeded in devising a better apparatus for determining disputes as to legally operative facts, one which both litigants will prefer

to the jury trial. While it remains, the practicing lawyer must be instructed in its management, and must be so at school, if he is attending one. The only available means for such instruction is some form of the practice court.

For myself, I see nothing better than to go forward in the line of the changes that have already been indicated. Keep instructors as *nisi prius* judges. A recent graduate of our own school objected that we had gone one step too far in our imitation of the current practice of our own state courts. He said that we had taken to dealing with the same questions of substantive law which happened at the moment to be engaging the attention of those courts, and in his opinion we should have directed our attention, and his, rather towards matters of procedure. His proposition was that the work of the practice courts should have been turned towards giving to himself and his classmates, among other things, an adequate knowledge of the practical handling of the provisional remedies.

To be sure, immediately upon graduation, he had found himself employed in the office of an old firm of commercial lawyers, doing a large business, and they had thrown a liberal share of the burden upon him. He found it necessary to get immediately a vigorous practical hold of those provisional remedies, and he found that his knowledge, which stood easily the first test, that of furnishing himself a clear conception, and which had passed the second, that of enabling him to give a clear expression of it in examination papers, was nevertheless not quite up to the mark when it met with the third test, and he was called upon to make it work, and produce sound results in actual cases. It seemed necessary to grant the soundness of his criticism, that the law school practice court should look rather to showing the fixed uses of the provisional remedies than to developing various views as to doubtful applications of substantive law. He felt very much as if he had been offered algebra, when he needed drill in the multiplication table.

Another had criticised the work which had been offered to him in the practice court, that it was altogether too general, that it should have been analyzed, and presented one point at a time, and that point brought forward rapidly, clearly and energetically discussed, and promptly decided. Again it was complained that we were imitating too slavishly the actual practice of the courts in permitting tedious delays, and spoiling the interest for spectators and onlookers, by dilatoriness and indecision, as well as by the indefiniteness arising from contesting an entire case, instead of a single point at a single session.

The point of this last man's criticism was certainly well taken. There had not been enough special adjustment of the cases which

had been under consideration, with a view to developing special questions. The cases had, indeed, been permitted to go too much adrift by reason of the instructor's desire to imitate the actual thing as closely as might be. The difficulty had arisen from losing sight of the fact that the actual case in the actual court is heard in order to reach a decision. The practice court case is brought in order to get instruction, especially in matters of procedure. There is a difference between mere experiments in the laboratory for the sake of instruction, and actually testing the viscera of a dead body to ascertain the fact as to the presence of poison.

A third suggestion, which my observation of practice court work in our school leads me to regard as a good one, is that an audience should be provided. Every one with any experience knows to what extent the business of real courts is assisted and accelerated by the presence of numerous litigants and witnesses, waiting to have their matters disposed of in their turn. For the sake of thus keying up the whole work, even at the expense of a couple of hours from the other class work of the third-year student, he should be required to attend a moot court session of three hours' duration as often as once in two weeks for the entire year. Most likely, he could profitably be required, if he had no hand in the proceedings on the floor himself, to hand in a brief paper of criticisms and suggestions, or else to attend a one-hour symposium for discussion in seminar of the matters taken up during that three-hour session. This latter should be done in sections, small enough so that each member of the class would be able to take part in it.

This last suggestion is now under favorable consideration, and, unless something better is suggested, will be put on trial in Nebraska during the coming year. Provision has been made for securing an additional instructor for that purpose. We do not like to have our students saying that they regard the practice court as the most valuable, but the least satisfactory, feature in the course.

A suggestion was made by one of the instructors last year that the plentiful use of the oath in our proceedings was likely to result in damaging that respect for it which needs to be genuine to enable the lawyer to appeal to it with effect in dealing with jurors and witnesses. A chance attendance at one of the trials in which a waggish student was introducing a male performer in the character of a female witness went so far to confirm the complaint that the form of oath was completely changed. A declaration upon the honor of the student that he would give the evidence, according to the statement of facts which had been furnished to him, to the best of his ability, and a like declaration by the jurors, in their im-

paneling, as to the trial of issues of fact, was substituted. It did not seem desirable to run any risk of incurring the charge that our practice courts were serving to introduce a contempt for oaths that would later lead in actual trials to subornation of perjury, or at least the knowing employment of false testimony, which is one of the scandals of the profession.

In those cases in which we desire a contest only over a point of law, we give the full statement of facts to both parties. In those where we wish an issue of fact to be raised and determined for the sake of jury practice, separate statements of the facts to be presented by each side are furnished, not as absolute facts, but as the statements which the witnesses will make. Of course, where this is done, there is the greater need that there be no absolute use of the witnesses' oath.

The labor of preparing such statements is considerable, but not so great as might be imagined, especially on the part of an instructor who is himself also a practitioner, and fully in touch with what is actually going on in the local courts. The demands upon the time of such instructors during the past year have proved severe enough so that one declined to continue any longer, because of an alleged pressure of outside business, and the other of the two young practitioners who have had this matter in charge in our institution declines to assume any greater responsibility for the coming year, or to devote any larger proportion of his time than he has been doing in the past. The result is that it is at present proposed to continue the last-named gentleman in the practice court work which he has been doing, and to procure a new instructor, as above suggested, whose time shall be mainly devoted to the practice court work, in connection with a few hours a week of lecturing upon practice, past and present.

We hope by such an arrangement to give a convincing quality to all of the instruction presented in all the classrooms of our institution, whether that instruction relates to the remotest history of institutions or the most recent analysis of legal principles. We hope to make the direct practical importance of all the work which we undertake so convincingly clear that it shall not appear either dry or useless to the dullest pupil, even when coming from the most severely technical teacher.

One item which has been quite insufficiently touched upon is the nonprofessional law student. He tends to increase in number with us. He also tends to improve in quality, and is becoming a factor of importance in regard to questions of method and instruction generally, as well as in the practice court. Personally my greatest difficulty with him has been in this connection. When I have found him incorrigible, I have merely reduced his required work to a mini-

mum, and practically gone on without him. In this kind of work with no test of its effect, except such as comes in the doing of it, if it is taken perfunctorily, and merely because prescribed, nothing of permanency or value will be obtained. If finally unable to interest him in it, the actual result has been to let him go without it, merely taking measures that he shall not demoralize the others. Such cases, however, have been very rare. In a few cases actual work in courts, necessitated by employment in law offices, has been accepted instead of the practice court work. This too, needs careful guarding to prevent demoralization, and is very infrequent; the rule being that the lads employed in law offices are among the most strenuous contestants in the practice court.

A friend, who is now a graduate student at an institution where the organization by law clubs is in use, sent me last year a plan for an elaborate organization of such clubs of about thirty members each, in which the required work was to begin in justice of the peace court with the first-year students, and go on to general nisi prius and appellate work in the second year, allowing one hour credit during the first and two hours during the second year, and requiring of the third-year students merely attendance at trials and service as judges, and special supervision of a certain portion of the first and second year students, so as to have the latter all distributed under the supervision of some member of the third-year class who should be responsible for and report on them from time to time to the instructors in charge.

He worked out his scheme in considerable detail and quite convincingly. The two striking points were the beginning at the starting point of the course with the first-year students, and the requiring of the third-year men only supervision and reporting. He left an extensive rôle for the instructors. He complained of the present club organization in his school that its dependence upon voluntary and but partially organized work resulted in the avoidance of it altogether by those who needed it most. His main idea, that of making the third-year men responsible for the work of the under classes, and giving them authority over it, subject to the action of the instructors, is worth trying in any school having a club system. He proposed to allow credit for one hour a week throughout the first year, and for two hours a week during the second, for the practice court work, and either one or none at all, during the third year.

In our own institution our reliance upon instructors to act as nisi prius judges prevents the full application of the scheme. The putting of the justice of the peace work of the second-year men under the supervision of a frequently changed committee of seniors might be tried with us. Seniors

have usually made good as justices of the peace.

Only lack of space and time prevented an elaborate apology for the attempt to justify to these assembled teachers of the law our practice courts, and the devotion to them of the time and effort they take. In preparing the address, the disposition to make such an apology disappeared. Undoubtedly the practice court is to the ordinary student, as one lately told me, the least satisfactory part of his course. This man said it was because he had no examination to meet as to that subject, and he had let it go. His examination will come when he faces the court with his first case, and the law student's ancient foe, diffidentia, assails him. His situation, and that of the thousands like him, is more due to lack of real appreciation for and interest in this branch of his training on the part of his instructors than of himself. In dwelling upon its vital necessity, I have only been doing here what we find ourselves everywhere as teachers compelled to do, insisting upon those counsels to which everybody assents, and which none of us effectually follow.

Discussion

Edward W. Hinton, Dean of the University of Missouri Law School.

I believe most of us will heartily agree with Dean Hastings that the law schools have neglected the subject of practice. Perhaps that was inevitable in the beginning, partly due to the idea that the law school was not adapted to the teaching of procedure, and partly due to the fact that the law schools were occupied in organizing their forces on substantive law. For the most part they have continued to neglect procedure, and that may possibly be explained by the fact that it is thought that procedure is becoming an obsolete subject; that when we get done reforming it, and to the ideal simplification of it, there will be nothing left to teach. Personally I do not believe that we will arrive at that condition for some years to come. So long as we have the common-law jury, we will have some difficulty in working with that jury, and we will have need for more or less law of procedure, and the successful practitioner must understand that branch of the law. I think it might be said that the very general neglect of procedure in the law school is one of the causes that have led to the unsatisfactory condition of our practice at this time. We have turned out a generation of lawyers splendidly equipped in substantive law, but with little training in procedure. They have been

left to pick up their procedure haphazard, and they seem to have done it rather badly. So that I believe we will all agree that the teaching of procedure is a very live question, and one in which the law schools should be vitally interested.

Dean Hastings has certainly made a very strong statement of the value of the practice court, and its value can hardly be overestimated; but I believe that any school or teacher who starts out to teach practice by means of the practice court alone, or even to a very large extent, is doomed to disappointment. In the first place, we cannot devote the necessary time to practice courts to work out any systematic theory and philosophy of practice, or teach it to a man by actual experiment. The time element is out of the question. Furthermore, try as we will, we cannot make practice cases come out as we wish; we cannot organize such a court so as to teach the subject as a system or scheme. We can assign cases that will involve this, that, or the other topic of substantive law; but whether they will involve any real question of procedure will depend largely on accident, unless the instructor directs one side to take certain steps and directs the other side to take certain other steps, and doing that takes away all initiative from the students. I believe, therefore, that we cannot rely on the practice courts to a very large extent to teach procedure as a scientific branch of the law. I believe the value of the practice court is simply as an aid to a properly worked out course on procedure, to give the students some practical experience in doing the things that they have worked out, just as they work out the problems of substantive law.

When some investigator has done for procedure what Professor Thayer and Professor Wigmore have done for Evidence, we can properly organize a procedure course, and, as an aid to that, I believe the practice court will be most effective. In the practice courts the student can get some things that he perhaps cannot get elsewhere. He can get some experience in dealing with the raw material of a case, the tale of woe such as a client brings into the office, which is quite a different thing from the record that we find in the Reports. The student can get practical experience in analyzing that tale of woe, in dealing with the raw facts, in making up his mind as to the real facts of the case, and applying the proper legal analysis to what you might call the operative facts. That experience I know is valuable. The practice court, I believe, will also aid the student in converting pleading from an abstraction into a concrete practical thing. He will become impressed with the necessity, not merely of stating a cause of action, but of stating *his* cause of action, because in the practice court he will run into the difficulties of pleading a situation which his proof does not

support. That, I think, is extremely valuable. He will also get valuable practical experience in formulating the charge or instruction to the triers of fact, in seeing the necessity for conforming the questions submitted to the triers of fact to the issues made by the pleadings, and he will pick up much of the mechanics of practice. But I believe, unless we properly organize a course on procedure, unless some law teacher does for procedure what Professor Thayer did for Evidence, that the work of the practice court and the work of the actual court will continue to be unsatisfactory, and that the student and the practitioner will never get from the mere doing of things the broad grasp and comprehension of the subject that must come from his study of it as a scientific system.

Oliver A. Harker, Dean of the University of Illinois Law School.

I approve the position taken by Dean Hastings. We all know that while there are some students that take law courses with no intention of becoming practitioners, but with the idea of broadening their general culture, of better fitting themselves for some other occupation, yet the vast majority of the students—in fact, nearly all of them—are studying in preparation for the practice of law. The chief duty of the law teacher and the burden of his responsibility, then, is to prepare the student for practice; and I feel that he will fall short of full performance if, in his instruction and aid to the student, he confines himself to the principles which underlie the common law and statutory law, methods of legal reasoning and the analysis of legal problems, no matter how thorough and efficient may be the instruction. In other words, however broad and thorough the instruction in substantive law, the preparation is not complete unless there is instruction in the law of procedure. That is conceded by every law school that holds membership in this Association, and is evidenced by the published curriculum of courses. I have heard some law teachers contend that it is not the province of the law school to teach procedure, and that it should not attempt it. Yet every law school announcement shows courses in that branch of instruction. I feel, also, so far as that branch is concerned, that the preparation of the student is inadequate if it goes no further than the acquirement of knowledge of the rules by which procedure is governed and the historical development of procedure.

I believe that we are guilty of some neglect in that regard. I think that is evidenced by the constant complaint of practitioners that the law schools are turning out graduates wholly deficient in this branch of legal education, young men that are helpless, so to speak, when confronted with the problems

arising in actual practice. Of course, as has been intimated by Dean Hinton, you cannot turn out a finished product. It will take years of experience in actual practice to do that. But the law schools can furnish such training that will enable the student to make the proper selection of tools, those that are appropriate to the matter in hand, and enable him to make intelligent use of them. I think there is no place where this training can be had equal to the moot or practice court, provided the same thought and the same attention is given to it that is given to the major courses in substantive law. The work should be in the hands of a man whose experience has made him familiar with office and court work, and the rules of procedure, a man who not only knows the tools, but whose experience has made him an expert in their use. He should bring to the work the same thought, the same sense of responsibility, the same preparation that the good up-to-date law teacher brings to any other course.

I may be pardoned for saying a word with reference to the plan in force in the University of Illinois with reference to this particular branch of procedure. The moot court work, when the school was first started, was not in charge of a professor of the Law School. Under an arrangement made by the President of the University, judges who were on the bench were invited to submit cases to be tried on an agreed statement of fact, and they presided as judges. One of the three judges of the Third district of the state every week would go to the University, having submitted a case that was pending in court—a live case. He would settle the pleadings, and, when the issues were completed, he would try the case on the agreed statement of fact. The practice of taking cases from actual cases obtains yet. I do not think that you can accomplish very much by taking imaginary cases, or cases of infrequent occurrence.

We have an arrangement whereby the clerks of the Appellate Court of the Second and the Third divisions furnish us copies of the printed abstracts and the briefs in the cases pending in those courts. The instructor in charge of the moot court runs through the cases. Of course, that involves a great deal of labor; but he does it, and he makes a selection of cases for trial. He tries to get cases in which the questions involve seemingly conflicting opinions that have been delivered by the Supreme Court and the Appellate Court, or cases presenting questions new in the state, passed upon, perhaps, in other jurisdictions, but not in the state of Illinois. From these, statements are formulated. Of course, the names of the parties are changed; otherwise, students might obtain copies of the briefs in the real case. Then a statement is published in the Bulletin, a weekly law school publication, and each student in the school is entitled to a

copy. The students who are assigned as attorneys (two on a side) are required, upon the statement of facts appearing in this Bulletin, to frame the necessary papers. If it is a suit at law, a declaration is drafted and all pleas for defense are prepared by the attorneys for the defendant. If it be a suit in chancery, the attorneys for the complainant bring in their bill, to which the attorneys interpose plea, demurrer, or answer, as the case may be. This work is carried on as nearly as possible like that in an actual court, and the business of an actual court is as far as possible paralleled. We have cases in the probate court and in the circuit court. They may be common-law cases, or chancery cases, and occasionally criminal cases. Occasionally a case will be found in which there is a conflict in the testimony between witnesses, and then the students are called upon to try it as a jury case.

One of the difficulties experienced by us, at first, was in getting the students to take to the work seriously and with interest. That has been largely overcome by making it a required course. Each student is required to draft a declaration or other initial pleading—not merely those students who are engaged in the case, but every student. If intricate questions of defense arise, then the students are required to draft special pleas. All the papers are passed to the professor. He examines them, and makes corrections, and calls the attention of the class at a subsequent period to the defects in particular papers. We have found this plan very successful in stimulating interest on the part of the student. I do not think much can be accomplished with the club court alone. Our faculty has reached the conclusion that club courts, presided over by student judges, should be under some supervision by the professor in charge of the regular moot court. We are not embarrassed as the schools are who have a large number of students from other states, because in our state ninety per cent. of our students, those who are preparing for practice at the bar, are Illinois men. Consequently we have the advantage of limiting ourselves to the practice court. I am decidedly of the opinion that, with club courts running in connection with the procedure courses of the school, you can accomplish very much good.

I agree with Dean Hinton that to make the work effective you should also have courses in procedure. We have what is known as a course in Illinois procedure, and I think we accomplish a great deal more than if we depended on the moot court alone.

Samuel Williston, Harvard University Law School.

We have tried at Cambridge to get up rather elaborate trials on statements of fact, where the statements were given out to the

witnesses in advance, and it seems as if the examination of witnesses was the work that students were most deficient in when they graduate and go to the bar. If a student is really taught pleading without a practice court, he has time enough to think over practice, and when he gets out and goes in an office he is very likely to get his pleadings right if he has learned his lesson. But in the examination of witnesses he is notably deficient, and he often possesses that lack of information which it seems to me is the particular in which that diffidence of which Judge Hastings spoke becomes most apparent in the court room.

W. P. Rogers, Dean of the Cincinnati Law School.

All of us who have the responsibility imposed on those who occupy a position of control in a law school have frequently been confronted with the question under discussion. The student, when he reaches his third year and realizes that he is now about to put into practice the profession he has been learning, begins to have an appreciation of his deficiencies. So I am glad that we are to have a discussion this afternoon that will give enlightenment to some of us who are yet in the dark concerning what we can best do to aid these young men in beginning practice.

The suggestions that have so far been made leave me still in the dark relating to the kind and amount of work we ought to undertake in practice courts. I think the schools should require that students who are going into the practice should know how to draw all necessary papers and pleadings, should know the meaning of a demurrer, and should know when and how to make necessary motions and amendments. But when we have gone to the extent of drawing pleadings and preparing cases for trial and appeal, shall we attempt anything further?

Is it possible for the schools to establish practice courts, so that the student in going out will be an expert practitioner? So far as our own school is concerned, we have found that it is impossible, and we have contented ourselves without undertaking anything more than work of this nature, together with the argument of legal points in the case. We believe the best student in substantive law is the man, after all, who is the best practitioner. He is the man who knows best how to practice when he gets into the work. Besides, the student entering the practice of law has a long period in which he can learn those technical phases of practice which he cannot learn in the law school itself.

I hope some who are here this afternoon, and who seem to think that even so much of the practice court as I have indicated is not necessary, will give us the reason for

this view, so that we can give to students who ask us why they shall not have more court practice in their course a reason which will be satisfactory to them. Is it a sufficient reason to say that, having learned thoroughly the substantive law, they will find themselves better fitted for practice than they think they are?

William E. Higgins, University of Kansas Law School.

I should like to discuss the subject in detail, but Professor Williston has asked a question which I think ought to be answered. First let me say, however, that when I came out of the active practice it was with the profound conviction that the law schools failed when they graduated a young man who went into court only to have the court say to him, on the first occasion when a motion or a demurrer was filed: "Your pleading is fatally defective. You have stated conclusions of law. You have stated no cause of action. We want the facts." On one occasion the young man, a recent graduate, then put in the facts. Again a motion was made to strike out as faulty, and he was told: "You have the facts; but they are evidence." He said to me: "What shall I do with the facts? What kind of facts do they want?" Now, that kind of experience on the part of this young man has led me to believe that law schools ought to turn their attention to practice.

There was presented to the authorities of our school a plan of practice which we have had in vogue for eight years now, and from my experience there are three things which we ought to teach by practice courts in our law schools: First, where to find the law; second, how to find it; and, third, how to present it in a court case. Following these there are also three things that a young man should learn, which constitute the fundamentals of practice. One does not have to learn the details of practice in the different states, either. A teacher can take the practice act of his own jurisdiction and teach it fundamentally after the first year. These are the fundamentals, in my opinion:

First, What is a conclusion of law, and how shall it be recognized?

Second, What is an element or operative fact, and how shall it be recognized?

Third, What is the evidence to sustain the specific operative facts?

We should aim to teach these three fundamentals in our practice courts. I do not believe in lectures alone, and I do not believe in courts of practice as a course either from the text-book, if we should have one upon practice, or from the casebook. I do not believe they alone will be successful. We must have adversary proceedings. The problem is to get them.

A number of years ago I had the pleasure of making a tour of some of the colleges of this country to ascertain how they arrived at concrete problems to be presented in their practice courses. I found that in most of them the practice courts were matters of publication in their catalogues, and that they did not exist as a fact. Secondly, I found that there were two methods employed in those schools which did try to give practice courses. The first was a purely moot court idea, where the instructor gave out type-written statements of the facts. Those were agreed facts. That is what they called them. The second method was to act out the facts containing propositions of law. They selected certain students as witnesses, and certain other students as counsel, and went through the form of a trial. It seemed to be a successful method of presenting the course on practice.

A third method has been in use in our own school—a modification of the method stated by Dean Harker. The record of the testimony in cases in the Supreme Court was obtained from the clerks of the court. In my own state there was a practice eight years ago of requiring a copy of the transcript of the testimony to be made. The original was kept by the Supreme Court, but the copy transcripts were at our service. All the pleadings, orders, etc., were taken out by us, leaving just the evidence remaining.

Under any of these systems, if you want to originate, if you want to give the court case, you must have the concrete evidence. I am getting down to fundamentals mentioned. We must have concrete problems requiring the student to recognize the three. Your conclusions of law, your operative facts, and your evidence to sustain each set of operative facts must be brought into a concrete whole in connection with the pleadings. Of course, the development of these takes time. If a particular practice court is a consumer of time at the expense of the teaching of the substantive law, there is something wrong with the practice court.

A practice court, in my estimation, should not be placed in the hands of students. It should be under the direction of a member of the faculty, who devotes his time to it. The pleadings should be taught along with the practice. By this means you have a course in pleading, and you may thus work out the concrete problems in pleading and practice in your practice courts. You can take transcripts of testimony, and give A., for example, the testimony of John Jones, and to B. the testimony of Thomas Smith, and tell A. to get the facts. Then send your student counsel to other student witnesses to quiz them. Of course, you will have your limitations. Very often, in a damage suit, for instance, in order to test the recollection of a witness, he will be asked a question which was not in the transcript. He might

be asked his age, for example. But what difference does that make? He can state his actual age. If he is asked a question that is not in the transcript, he can say that it is not in the transcript.

The proposition is to work out your particular problem of practice. If you co-operate with the other members of the faculty, you can have your problem of law in agency, or on any of these disputed questions that are brought up in the classes in the substantive law. But I advise against cases involving mental gymnastics. These are unnecessary in practice courts. First, a practice court should teach where to look for the facts; second, how to look for them; and, third, how to prepare them for presentation. The court should teach the student to recognize that a conclusion of the law is to be deduced from a state of facts which we call operative facts, to recognize them, and to drill him so that he may know that the evidence which is given in the trial must be such as to sustain that deduction or conclusion. Concrete exercises can be given, and must be given, I think, or else you will have a situation which confronted me when I went out of school into practice.

I say, therefore, in conclusion, that we have found it possible for eight years to teach a connected course of procedure by adversary proceedings in practice courts in connection with the pleading course.

Chas. M. Hepburn, *University of Indiana Law School.*

There is so much with which I concur in the interesting paper that we have just heard that I hesitate to speak of one thing in which I find it hard to concur. But I was impressed with the emphasis which the paper lays upon the imitative function of a practice court. I wonder whether Dean Hastings would really have us believe that imitation is the chief end of a University practice court—"as if its sole vocation were endless imitation." It seems to me that the practice courts run too much to imitation.

I recognize, of course, the importance of rule of thumb work in the practice court. There ought to be a good deal of it. It is as it should be if a practice court trains the student in the use of the known and ancient forms of expression as contained in approved precedents, until their observance becomes a habit. But why stop with this?

If a practice court encourages merely the copying of current forms, with little or no thought for the scientific basis of pleading, with little or no drill in the fundamentals of pleading as a science, it misses the chief end of a University practice court. I think that a student ought to obtain in a practice court such a drill in the fundamentals of pleading as a science that in any ordinary emergency he will be able at least to get his bearings.

In other words, I think that a practice court should look more to the scientific basis of pleading than to a mere copying of correct forms. I recall an instance in which the graduate of a leading law school, an LL. B. of two or three years' standing, came hurriedly into the law library of a courthouse with the whispered inquiry: "For the Lord's sake, tell me what a general denial puts in issue." He was up against it in the trial of a case, and had no answer ready.

President Pound (interposing):

The court could not tell him that, could it?

Mr. Hepburn:

The court did not tell him that.

President Pound:

It is pretty hard to tell that.

Mr. Hepburn:

Yes; it is pretty hard. Therefore I think a moot court that does not carry a student into the fundamental principles and drill him in them fails to meet its obligation to the student.

John B. Sanborn, *University of Wisconsin Law School.*

The only excuse that I have for getting into this discussion is that we have devoted a great deal of serious consideration to this problem at Wisconsin, and we have come to certain conclusions bearing upon questions which have been raised this afternoon, and we are pretty well decided as to those things. We may be wrong about some of those conclusions, but some of them have been raised by the question that has been asked. Professor Williston asked about dealing with witnesses. Now, in my opinion, the attempt to have a mock trial of any kind, where you attempt to quiz witnesses, is absolute foolishness, because the conditions are so entirely different from those you get in an actual trial. Last year I was asked to preside at a mock trial held by one of the law school fraternities, and where one of the counsel was quizzing a witness and the other attorney got up and objected, because the answer of the witness was not contained in the agreed statement of facts. Now, when you get into that sort of thing, you see how far you are going away from the procedure in an actual trial. When you have a witness who has learned what he has got to say, you have only the situation which resembles an actual trial where you have a perjured witness. That is the situation which exists always when a witness is reciting what he has learned.

Another thing which I do not agree with, that has been said here, is this: That is,

that you can make any use of statements found in the record in an Appellate Court. I agree with Dean Hinton on that. But there is a reason which he did not mention. A lawyer who has been in practice knows that the record in the Appellate Court does not state what happened in the lower court at all. If it did, he would get into trouble with the Appellate Court. For instance, the rules of the Appellate Court prohibit your setting out the testimony at length, unless a question is reserved on that particular point; they prohibit your setting out the charge at length, unless the entire charge is necessary for some question that is reserved. Take the record on appeal. It says an objection was made, and the court ruled so and so, and then it goes on to say to which ruling the defendant, or the plaintiff, as the case might be, by his attorney then and there excepted, which exception was duly allowed. Now, the chances are in this part of the country that no such thing ever happened. You simply put in that an exception is taken to every ruling. So I do not see what real use can be made, at least in the jurisdictions in which I have practiced, of requiring that language. I have always tried to get records on appeal which would show what actually occurred in the trial. I have got a few; but most of them do not show that at all.

The thing that we try to do is to have a general course in the fundamentals of practice, supplemented by a practice court in which I try to give the students certain things as illustrative of those matters. You cannot cover the thing completely, or you cannot cover the same ground with any two sets of students in different cases, unless you tell them what to do, as Dean Hinton says. I give them a statement of facts. I do not say who the parties are. They must determine that; they know who the person is that is consulting them, and they must determine who the plaintiff ought to be, and who the defendant ought to be, what the venue is, and how they are going to get into court. I had a student last year who was trying to get that subject through his head, and he didn't succeed until the very last month. I thought the best thing I could do was to let him go on and see what he would learn about it. I use the court rules and the statutes of the state, supplemented by a set of rules of our own; but the student must go to the rules and find out what they are for himself.

There is another thing which prevents the trying out of an actual case, and that is the time element. Those of you who have been present at the opening of court when the calendar is called know that the judge wants to know how long each case is going to take, and the attorney for the plaintiff says it is a short case and will take about half a day, and then the various attorneys note down the time allotted to the various cases in their

note books, and they write two or three days. I have used actual cases in my own work, and after I have eliminated a lot of matter in a so-called short case, I never have found a case which could really be tried at one sitting of a practice or moot court. We have tried that sort of thing, but it drags along, even after you have eliminated everything you can. So, as I say, it takes too much time.

We try to give students a chance to prepare a case, to make their proof of service, and then the student appearing for the defendant comes in and demurs or answers, or moves to strike out; then motions are made, and finally we come down to the actual time. In Wisconsin a special verdict is a matter of great importance. We assume that all controverted facts in the pleadings are supported by the evidence. So we prepare a special verdict on that, and then motions are made on the special verdict, judgment is entered, and the defeated party takes his appeal. That is an outline in brief of what we have decided that we can do in actual trial work, and it is as much as we try to accomplish.

James B. Brooks, Dean of the Syracuse University Law School.

I would like to balance this thing up a little bit. I am afraid that I do not have the reverence for this matter of practice that I ought to have. We have a lot of it in our curriculum, and I would cut out at least one-half of it, if I could. The judges are complaining because our young men are not full-grown, mature lawyers when they come into court, and they insist upon our teaching the details of practice as far as possible, even of the trial of questions of fact, when the truth is that only a small percentage of the lawyers ever try questions of fact to any great extent.

I do not consider that my students are being trained to go into court and try cases before a jury specially. But what I rose to say is this: The moot court, which presents questions of law, puts the student on his mettle to find the law and the authorities, and determines the form of action as a rule. This also gives the instructor an opportunity of training the student in the things that he ought to be trained in, such as his address to the court, his attitude and his language before the court, the logical arrangement of his points in his brief, the proper citing of authorities, the backing of his papers, and all the little details so needful to be known. The young men are grateful for this kind of training, which they get only in a court that is organized for presenting and discussing questions of law. When they are rightly instructed in such a court, no student can go through a term without becoming familiar with the whole framework of the case in

court. They cannot fail this very well, if they are men that have the legal conception, the stuff in them that enables them ever to try actions successfully.

Experience, as we all know, is very excellent. I left the law school without ever having read a copy of the Code of New York, and I never had heard a lecture upon it. I never saw a paper prepared under the Code until one was served upon me, that I remember of, yet I never had any difficulty with the Code of Practice. I have an abiding faith that, if a man is made for a lawyer, he will have no serious difficulty with the practice if he knows the law. So I would cut out all this routine of trying to fashion a mock court for the trial of questions of fact.

I feel very much interested in this branch of our work, but I do not think it is right to take all the time that we do take in teaching the young men how to write their names on a paper, or how to draw up a paper, or how to examine a witness. When the young man gets out of school, and gets into an office, and has had one case of foreclosing a mortgage, for instance, he will never want any instruction on that subject, yet it might take me three months to get into his head what he himself would learn in that one bit of experience. I would rather have a man who goes out without knowing anything about practice than have a man that has been put through all this detail in mock trials, in the endeavor to build him up in trial practice. In the first case, he will learn through application and industry, and will constantly advance in self-reliance; in the other case, he will always be trying to remember the things he was taught in school, and independence will be lacking.

Frank M. Porter, Dean of the University of Southern California Law School.

There is a strange difference of opinion as to the possibility and the desirability of teaching practice and the time that should be given to this subject. Objection is made that you cannot turn out a finished practitioner from your practice courts. Of course, we cannot turn out finished products. The law schools do not turn out a finished product in any subject, as, for instance, in real estate law; but you do turn out men knowing something of the subject, and knowing how to find out what they do not know. I think it is possible to teach practice in a law school; not that you will create a perfect instrument, but you will turn out a person who will know something about how to conduct himself in court, and he will be enabled thus to easily fit himself to the exigencies of a trial as they may arise.

I was talking with a graduate of a school,

a young man who had the degree of A. B. and J. D. He said: "I am loyal to my own school, but it does not do all that it should. I graduated and got my degrees. The first week I was in an office, a man brought in a summons and a complaint, and asked me what to do about it. I did not know a summons from a lense. I got behind the door and read over enough of the paper to find that I had 10 days in which to do something. I told the man to leave the paper with me and come in again. Then, after the man left, I went to a lawyer to find out what the paper meant." A prominent attorney of this city said to me to-day: "Law school graduates are of no use in an office. They don't even know what a summons is."

Moot court practice is a good thing, because we can teach the student in that way what they will run up against the first time they attempt court work. We are teaching the student about tools. Why not give him some idea of the way in which to use those tools? Every student that comes to your school is looking forward to the day when he will practice in court; but the idea here seems to be that you should cut out moot court work. For eight years I have been connected with a school in which there has gradually developed a moot court system. The boys do not have to be urged to their work. We require two and one-half years of actual moot court experience. The objection is made that it takes time that they should be giving to something else. I think that the time is well spent.

We commence the work in the freshman year by a series of lectures, emphasizing the duty of the lawyer to his client, to the court, and to the state, followed by presentation of very elementary principles of practice. During the second year and third year we require each student to try four cases per year in the lower court and appeal two in a court of last resort. They must prepare the pleadings, trial brief, and other papers, just as an attorney would in actual work. Every paper, before filing, goes to the presiding judge. If markedly deficient in matter or form, it is returned for correction. Then it is filed. Finally the student comes to the actual trial of the case. Trial brief is prepared; jury is struck; witnesses are examined. The whole procedure is based upon the practice of the court of general jurisdiction of our state. The student is required to make his grade in practice work the same as in any other subject. His marks are based upon pleadings, preparation of trial, conduct of case, and promptness. We find that the students get a great deal of practical and valuable experience in this way.

Those of you who have been trial lawyers know the embarrassment you found in examining for the first time witnesses in court, in attempting to avoid leading questions and other objectionable practices. This practice

court is sufficient to enable the lawyer, upon first appearing in court, to escape these embarrassments. We set aside Tuesday night for moot court work. We have twelve departments in session, presided over by lawyers in active practice. These lawyers are on the pay roll of the school and try about 700 cases a year. This system costs money. It takes time, and requires careful attention and supervision; but I believe it pays. The student approaches this part of the work with enthusiasm, and realizes that he is actually doing that which is a part of his life work. It is not at all impossible to teach practice. Of course, the teacher must know how to practice himself before he can teach it to others. It ought not to be difficult to find such teachers.

H. A. Bronson, *University of North Dakota Law School.*

As a bar examiner, I would like to ask or suggest to the teachers here a question. The fundamental defect, as I have observed it to-day, and as it has been brought to my mind as I have listened to the talk that has taken place here, is that there is no ability to vitalize the moot court. In dentistry, the prospective dentist operates on his patient. In medicine, the prospective physician operates on his patient. Why not propose something of the same sort in law? Why is it not possible for the learning that we have here as represented in the law schools to vitalize the moot court? I have observed that the men who have had an opportunity before admission to the bar to go into a justice's court and get actual practice are the men that more readily forge ahead in the actual practice. As a bar examiner, when a student comes before me to be admitted, I assume that the tendency is, among the law schools to-day, that I am to examine him for admission to the bar upon the theory that he is qualified to practice law. That assumption is incorrect, is it not? Must it not be incorrect, so long as we only allow a three-year course within which to teach substantive law and procedure? In this country our law is even more complex than it is in continental Europe, where it takes three times the time to fit a man for admission to the bar, and where some sort of legal clinic is provided. It seems to me that the fundamental objection to the moot court practice is that we do not sufficiently vitalize it.

Report of the Executive Committee

William R. Vance, Dean of the University of Minnesota Law School, pre-

sented the following report on behalf of the Executive Committee:

1. That it is inadvisable to divide the Association of American Law Schools into sections, or to have a single section, such as was proposed in the resolution offered at the last annual meeting of the Association.

2. That there is no occasion to make any change in the system of bookkeeping which has been used for a number of years last past by successive Secretary-Treasurers, but that, to facilitate the auditing of the Treasurer's accounts, it shall be the duty of the President of the Association, at the first session of the annual meeting of the Association, to appoint an auditing committee, which auditing committee shall report at the second session of the annual meeting of the Association.

3. That the Executive Committee recommends that subdivision 4 of article 6 of the Articles of Association be amended to read:

"4. It shall own a law library of not less than 5,000 volumes."

4. That, if possible, the President arrange for a paper on and discussion of the subject of moot courts and practice courts in American law schools.

5. That a reception and smoker, such as was given for the first time last year, be held during the 1912 meeting.

6. That a meeting of the Executive Committee be held in Milwaukee on the day of the first session of the annual meeting of the Association to consider applications for admission to the Association and such other business as may properly come before the Committee.

The College of Law of Marquette University, Milwaukee, Wisconsin, the College of Law of the University of Idaho, the Law Department of the University of Montana, and the Department of Jurisprudence of the University of California have applied for admission to the Association.

The proposed amendment to subdivision 4 of article 6 of the Articles of Association was filed with the Secretary on May 2, 1912, and on the same day a copy of the proposed amendment was sent to each member of the Association.

Also the following supplemental report:

Supplemental Report of Executive Committee

The Executive Committee reports that it held a session in Milwaukee at 10 a. m. of Monday, August 26, 1912, and after full deliberation makes the following recommendations:

1. That the application for admission to

membership made by the Department of Jurisprudence of the University of California, by the Dickinson Law School, by the College of Law of Marquette University, by the Law School of the University of Kentucky, and by the Law Department of the University of Tennessee are approved, and it is recommended that each of the said schools be admitted to membership in the Association.

2. That the consideration of all other applications for membership be indefinitely postponed.

3. That the following resolution as to the policy to be pursued by the Association in the matter of admission to membership be adopted by the Association:

"Whereas, the maintenance of regular courses of instruction in law at night collateral to courses in the day tends inevitably to lower educational standards:

"Be it Resolved, that the policy of the Association shall be not to admit to membership hereafter any law school pursuing this policy."

W. P. Rogers, Dean of Cincinnati Law School:

I suggest that we take up the report of the Executive Committee item by item.

President Pound:

I think that is a good suggestion, and by general assent we will do that.

Subdivision 1 of the report was read, and, on motion, adopted.

Subdivision 2 was read, and, on motion, adopted.

Subdivision 3 was read.

James B. Brooks, Dean of Syracuse University Law School:

What will happen if a member of the Association does not own a library of 5,000 volumes?

President Pound:

I suppose they would be given a reasonable time within which to procure such a library.

Mr. Brooks:

That is what I suppose. The word "volumes" does not mean anything. I like the spirit and the intent of the resolution, but "5,000 volumes"—why, any of us can collect 5,000 volumes that are not worth very much. I suppose all of us have invitations every year to send a representative to inspect a library that is for sale. I think that language is a little obscure, and that it should be made somewhat more definite, in specifying

ing the kinds of books that are to be included in the library.

William S. Moorehead, Pittsburgh Law School:

It seems to me that the spirit of that amendment is that a standard shall be set up by this Association to which all law schools belonging to the Association shall conform, the purpose being that every law school shall own certain works. If that is the spirit of it, I would say that the law school of the University of Pittsburgh is in hearty accord with it. I would, however, like to note an objection to the manner or form in which it is stated. It seems to me that undue emphasis is laid on the word "own." If that is important, should not the ownership be more clearly defined? Is it not access to a library by students that is desired? Would the resolution be complied with if a law school in St. Louis should own a law library located in Boston? No. It seems to me that what is sought by the resolution is that the students in the law school shall have access to a law library of at least 5,000 volumes, no matter in whom the legal title thereto rests. As an example of a library where the legal title is not in the law school, the Pittsburgh Law School is located directly across the street from the county courthouse and in the courthouse there is a library of 25,000 volumes, and the students are admitted to that library, and they have every facility afforded them for referring to the books.

James Parker Hall, Dean of University of Chicago Law School:

I would say, in addition to the objection made by Mr. Brooks, which goes to the root of the matter, that in the National Reporter System each volume contains the same amount of matter that is contained in five or six separate volumes of official State Reports.

President Pound:

I think the Executive Committee may be relied upon to word this amendment properly. We must leave them some discretion.

William D. Lewis, Dean of University of Pennsylvania Law School:

I understand the meaning of the resolution to be that we will not admit to membership in the Association a law school that does not possess a proper library. It was the sense of the committee that it should not encourage law schools that did not have thorough equipment. Such a library could be purchased intelligently, and a careful selection made, from any reputable book-

seller in a very short time. Of course, if you wanted to create a library of 50,000 volumes, it would take a year to do it. But that is not the point. As to schools already in the Association, it is for the Association to determine whether they will be given a reasonable time to come up to this requirement.

Subdivision 3, on motion, was adopted.

On motion the recommendation of the Executive Committee that the Department of Jurisprudence of the University of California, the Dickinson College of Law, the Marquette University Law School, the University of Kentucky Law School, and the University of Tennessee Law School was approved and adopted.

Mr. Vance:

The next recommendation of the Executive Committee in its supplemental report is that the consideration of all other applications for membership be indefinitely postponed.

On motion, this recommendation was approved.

Subdivision 3 of the Supplemental Report of the Executive Committee, on motion, was adopted.

New Officers

On the recommendation of the Nominating Committee, Henry M. Bates, Dean of the University of Michigan Law School, was elected President, and W. W. Cook, of the University of Chicago Law School, was elected Secretary-Treasurer, of the Association for the ensuing year.

The members of the new Executive Committee are:

William D. Lewis, of the University of Pennsylvania; D. O. McGovney, of Tulane University; and Roscoe Pound, of Harvard University.

Meeting of Section of Legal Education of the American Bar Association—1912

THE section of Legal Education of the American Bar Association met in Milwaukee, Wisconsin, on August 29 and 30, 1912. Mr. Hollis R. Bailey of Massachusetts, Chairman of the Section, presided. A committee consisting of Frances M. Burdick, of New York, Edward W. Hinton, of Missouri, and Alfred F. Mason, of Minnesota, was appointed by the chairman to nominate officers for the coming season. On recommendation of the committee, Mr. Walter George Smith, of Pennsylvania, was elected Chairman, and Charles M. Hepburn, of Indiana, was elected Secretary of the Section for the ensuing year.

The following papers were read:

ADDRESS OF CHAIRMAN

The Work and Aims of the Section

By **HOLLIS R. BAILEY**
Of the Massachusetts Bar

When any institution or association has existed for a considerable period of time, it is desirable that it should review its history, and see what it has accomplished, and consider what it can do in the future to justify its existence. I invite you to-day to join with me in doing what the prudent merchant does yearly, viz., a taking account of stock.

Origin of the Section

The Section was conceived at Saratoga in 1892, and was born at Milwaukee in 1893. It is peculiarly fitting that at this meeting, held at the place of its birth, the Section should consider its origin, review its work, and, taking heart from what has been already accomplished, turn its face toward the future with renewed courage and a firm re-

solve to make the work of the Section in the future even more of a success than it has been in the past.

Prior to 1893 the work of the American Bar Association in the matter of legal education was largely in the hands of the Committee on Legal Education and Admission to the Bar, which was established as a standing committee in 1878, when the Association was first organized.

Among the objects mentioned in the Constitution of the American Bar Association we find the following: "Its object shall be to advance the science of jurisprudence." No mention was made specially of the subject of legal education or admission to the bar, but it was from the outset recognized that an illiterate bar means an unenlightened judiciary, and that the science of jurisprudence can be advanced in no better way than by promoting the cause of legal education and establishing uniform and reasonably strict requirements for admission to the bar.

The work of the Committee on Legal Education prior to 1893 was somewhat spasmodic. It presented interesting and valuable reports in the years of 1879, 1881, 1890, 1891, and 1892.

The report of 1890 begins as follows: "The Standing Committee on Legal Education hesitate to break the record of masterly inactivity formed by the unremitting efforts of their predecessors for at least ten successive years."

In 1891 the report of the Committee on Legal Education was so valuable that John F. Dillon, of New York, in speaking of it said: "It is my deliberate conviction that, if this Association in the ten or twelve years of its existence had done nothing more than to secure that report, it would have been enough to have justified its existence."

In 1879 the report of the Committee contained a resolution urging the requirement of three years' study of the law as a prerequisite to admission to the bar. This resolution came up for consideration at the meeting of the Association held in 1880, and there was such difference of opinion that nearly the entire time of two sessions was consumed by the arguments pro and con.

In 1891 and 1892 the time of the Association was so occupied with other matters that there was no time for the reading of the reports of the Committee on Legal Education already referred to; but in 1892 considerable

time was devoted to the discussion of a number of resolutions introduced by the Committee, one favoring the requirement of three years' study of the law prior to admission, and another favoring the creation of permanent State Boards of Bar Examiners.

It appears quite plainly from a perusal of the Annual Reports of the American Bar Association that the activities of the Association by 1892 had become such that a proper amount of time could not be devoted during the regular meetings of the Association to the consideration and discussion of the subject of legal education and admission to the bar.

The importance of the matter was, however, fully recognized, and the scheme of a Section came, not as a hostile movement having for its purpose the sidetracking of the subject of legal education and admission to the bar, but originated with members of the Committee on Legal Education and their friends, who desired to see the cause in which they were interested given more time and greater attention. The Executive Committee of the Association, John Randolph Tucker, of Virginia, being Chairman, was friendly to the movement, and in 1893 at Milwaukee reported a new by-law as follows:

"XIV. (1) A Section of the Association, to be known as the Section of Legal Education, is hereby established, which shall meet annually in connection with the meeting of the Association, but not during such hours as the Association is in session.

"(2) Its object shall be the discussion of methods of Legal Education, and it may make recommendations to the Association, which shall be referred by the Association to the Committee on Legal Education.

"(3) The proceedings of the Section may be published from time to time at the discretion of the Executive Committee and on the recommendation of the Committee on Publication.

"(4) All members of the Association who desire may enroll themselves as members of the Section, and persons not eligible for membership in the Association, but who are engaged in teaching law, may be admitted to the privilege of the floor at any meeting of the Section by vote of the Section.

"(5) The Section shall be organized by the annual appointment of a Chairman and Secretary by the Section at its first session."

On motion of Simeon E. Baldwin, of Connecticut, the by-law was adopted.

The Section on the same day held its first meeting, and organized by electing Henry Wade Rogers as Chairman and George M. Sharp as Secretary.

No by-laws were adopted. A resolution, however, was adopted as follows:

"Resolved, that the Chairman and Secretary of the Section of Legal Education and the Chairman of the Standing Committee on

Legal Education of the Bar Association for the time being shall constitute an Executive Committee for the Section, with the usual powers of such a Committee."

Twenty-seven members of the American Bar Association enrolled themselves as members of the Section.

It is to be noticed that a very close connection was thus established between the Section and the Committee on Legal Education; the Chairman of the Committee being ex officio a member of the Executive Committee of the Section.

It is also to be noted that any resolutions or matters recommended by the Section to the American Bar Association for its action or approval were to be referred in the first instance to the Committee on Legal Education.

It might have been expected that under this arrangement the Committee on Legal Education would have become more or less dormant, contenting itself with considering and dealing with matters emanating from the Section.

Indeed, in 1894 the Committee on Legal Education presented a brief report, saying that it was expected that the discussion of methods of legal education in the Section would result in the recommendations to the Association and the reference of the same to the Committee on Legal Education, and that it seemed to the Committee better to allow the Section to take the initiative and await the results of its work.

The course of history, however, has been somewhat different since 1892. The Committee on Legal Education has filed as many as nine reports, of an aggregate length of over 270 printed pages.

It has dealt not only with resolutions coming from the Section, but has submitted to the Association directly a very considerable number of resolutions of its own making, and has procured action by the Association upon the same.

This method of procedure on the part of the Committee on Legal Education, if continued, may seriously interfere with the work of the Section. The Section will find that many questions which it desires to discuss and recommend action upon have already been acted upon by the Association, and possibly in a way which will seem unwise to the Section.

We believe that the original scheme was a good one, and that the Committee on Legal Education would do well to allow matters pertaining to legal education and admission to the bar to be first discussed and acted upon by the Section.

The Section of Legal Education was the first offspring of the American Bar Association. Since the Section came into being the Association has given birth to another Section, viz., the Section of Patent, Trade-Mark, and Copyright Law. It has for many

years recognized three foster children, viz., the Commissioners on Uniform State Laws, the Comparative Law Bureau, and the Association of American Law Schools.

The Section of Legal Education has no occasion to quarrel with any of these later offspring of the Association, except in the matter of obtaining from the parental purse sufficient money to meet its proper expenses. In 1910 the Association was asked to form still another Section, but wisely declined to do so. The financial question is always an important one, and the Association should not have more children than its income will warrant.

Work of the Section

As we have already stated, the object for which the Section of Legal Education was formed, as stated in the by-law, was the discussion of methods of legal education. This, we take it, includes the whole matter of legal education and admission to the bar, and the work of the Section thus far has extended more or less over this entire field.

Since 1893 the Section of Legal Education has held meetings annually in connection with the meetings of the American Bar Association.

Including the annual addresses of the different chairmen, there have been in all 70 papers read, aggregating over 1,000 printed pages.

The subjects of the different papers and the names of the authors are given in the last report (1911) of the American Bar Association at pages 617-620. Among the names which so appear we may note those of Prof. James B. Thayer and Dean James Barr Ames of the Harvard Law School, the name of Simeon E. Baldwin, Governor of Connecticut, and that of Woodrow Wilson, Governor of New Jersey.

During the same period (1893-1911) there were 81 papers read before the Association itself, including the annual addresses of the Presidents, the same aggregating over 2,800 printed pages. I have not read all of these papers, but I feel sure that the Section has reason to congratulate itself, not only upon the extent, but also upon the quality, of its contributions to the printed records of the Association. The Executive Committee and the Committee on Publication of the Association have given full space to the proceedings of the Section, and have printed in full all its papers and addresses. The topics discussed in the various papers have been very varied in character. The conditions of legal education and the requirements for admission to the bar in all parts of the world have been fully covered.

The proper requirements for admission to the bar, both as regards preliminary general education and period of legal study, have been discussed. The work of the law schools and the benefit to be derived from study in

a law school, as compared with study in a law office, have been dealt with.

The work of the boards of bar examiners has not been overlooked.

I venture to say that there is no body of literature dealing with the subject of legal education which will compare in its extent and value with the papers read before this Section and published in the Reports of the American Bar Association.

But the reading of papers has not been the only important activity of the Section.

There has been much interesting and valuable discussion at the different sessions of the Section, and some important resolutions have been adopted and recommended for the consideration of the Association.

In 1895 the lengthening of law school courses to three years was favored, and a hope was expressed that each state, as soon as practicable, would require candidates to study law for three years before applying for admission to the bar.

In 1897 the Section favored state supervision of law schools in the matter of conferring law degrees, and disapproved of law schools granting the degree of Ph. D.

In 1898 the Section extended an invitation to all the members of the different State Boards of Bar Examiners to attend the meeting, and eight State Boards were represented, and three sessions were devoted to hearing reports from the different delegates.

Since 1898 Bar Examiners have frequently been invited to attend our meetings and take part in the exercises.

In 1899 the Section instigated the formation of the Association of American Law Schools, which began regular meetings in 1902.

In 1901 the meeting of the Section was in Colorado, and several ladies who were members of the bar of the state attended the meeting and joined in the discussion. It is reported that one of these ladies said that, if she had known beforehand that she would be invited to speak, she would have worn a more becoming gown.

It was at this meeting that George M. Sharp, who had served continuously as Secretary since 1893, declined a re-election, and our present very efficient Secretary, Mr. Hepburn, was elected.

In 1904 Dean James Barr Ames, who then held the office of Chairman, in his annual address gave a very interesting and valuable review of the work, not only of the Section but also of the Committee on Legal Education. In this address he took occasion to speak strongly against the practice of admitting to the bar on law school diplomas. He also urged the importance of students devoting their whole time to their work in the law schools, and expressed the opinion that a majority of professors and teachers

in a law school should give their entire time to school work and not engage in the practice of the law.

In 1905 the Section passed the following resolution: "Resolved, that the Section of Legal Education of the American Bar Association desires to reiterate the disapproval heretofore expressed of the practice of admitting to the bar on law school diplomas. The Section is convinced that it is not in the interest of the schools or of the profession that graduates of law schools should be admitted to the bar without examination, and it recommends that the American Bar Association should again express its opposition to any such policy." It may be noted here that in 1908 this resolution was approved and passed by the Association.

At the meeting in 1905, in the course of the discussion, William S. Curtis, of Missouri, made the following remarks, which will be of interest at this time, in view of the paper which we are to have to-morrow from Mr. Boston on a kindred topic. He said: "I hoped that some one would suggest, since we are talking about elevating the ethical standards of the profession, what I consider the chief difficulty; that is this: The reluctance of our judges to act upon reports of grievance committees of the Bar Association in cases of disbarment; and I hope there are judges here who will listen to this suggestion. Not only do many of our judges hesitate about disciplining the profession in cases requiring it, but when a Bar Association does succeed in having a member disciplined, in a year or two afterwards a motion is made for his reinstatement, and it is generally granted. That, I think, is the great obstacle to elevating the general moral tone of the profession."

It was also at this same 1905 meeting that a committee was created to draft a set of standard rules for admission to the bar.

In 1907, at the meeting in Portland, Maine, the following resolution was introduced and referred to the Committee on Standard Rules of Admission, as follows: "Resolved, that it is desirable that Bar Examiners, in recommending applicants for admission to the bar, should designate a reasonable number of those best qualified as entitled to honorable mention." No report has yet been made by the Committee.

In 1909 it was voted that the right to confer the degree of LL. B. should be restricted to law schools having a three-year course.

The Committee on Standard Rules for Admission to the Bar, appointed in 1905, has during the past three years done a good deal of work through its chairman in the way of distributing printed copies of its preliminary report and inviting suggestions thereon. This distribution of printed matter has served to bring the work of the Section to the attention of a very large number of peo-

ple interested in the matter of legal education and admission to the bar.

The report of the Committee is to be the subject of further discussion at the session to-morrow.

Aims of the Section

It is fair to say, I think, that the Section of Legal Education has thus far justified its existence and has been worth what it has cost. Let us now consider, in closing, what the outlook is for the future, and whether there still remains work which is worth doing. Bodies like this have no right to exist when they have outlived their usefulness.

It is our duty to see to it that the Section of Legal Education shall do something worth while in the years to come. It will not be enough to meet year by year and listen to the reading of papers, however timely, able, and interesting the same may be. There must be discussion of unsolved problems, and resolutions must be framed and passed and recommended for the consideration and approval of the Association. Some one may suggest that all questions of importance will soon be solved. I venture to prophesy that this will not happen; but, even if it should happen, the work of the Section will not be ended. As long as we have a legal profession, just so long will there be a constant stream of illiterate applicants seeking for admission. If the courts and Bar Examiners are to protect the public from quacks and shysters, they must have the constant support, not only of the lawyers and the Bar Associations, but of the public at large. An enlightened public opinion must be cultivated and maintained.

Human institutions tend to decay, and must be constantly watched and protected. In 1842 the state of New Hampshire passed a law providing that any citizen twenty-one years old and of good moral character should be entitled, without more, to be admitted to the bar of New Hampshire. New Hampshire long ago emerged from this state of know-nothingism; but the state of Indiana, if I am correctly informed, still has the New Hampshire law above cited as a part of its Constitution.

This law, I am told, is evaded, however, in Indiana, and the lawyers of Indiana as a whole are better trained than one would expect.

The Lincoln argument will die hard, and it will be a number of years before all the states will make three years' study of the law a prerequisite for admission to the bar. Some of the law schools will hold fast to their special privilege of obtaining admission for their graduates without any bar examinations.

With the Evening Law Schools and the Correspondence Schools encouraging men to study law, even when they have never studied anything else and are almost illiterate

so far as general education goes, the fight for a high school education requirement will be a long one.

The Section, furthermore, in addition to its addresses and papers and discussion and passing of resolutions, must have some work by live committees. No committee should consist of more than five members, and men should be selected who are not too far apart to attend meetings without undue expense. Money must be provided for the necessary expenses of the Section and its committees.

And now, gentlemen, let us pledge ourselves to continued effort with fresh zeal in the work of making the profession of the law what it ought to be—learned and honorable.

The Relation of Legal Education to Simplicity in Procedure

By JOHN B. WINSLOW

Chief Justice of the Supreme Court of Wisconsin

The Greatest Teacher whom the world has ever seen was once sharply criticised because he had disregarded the petty rules laid down by the Rabbinical Code for the observance of the Sabbath day. Turning upon his critics, he utterly silenced them with this sentence: "The Sabbath was made for man, not man for the Sabbath."

Paraphrasing the sentence, and applying it to the subject in hand, we may obtain in a single proposition the fundamental principle which should govern procedure, namely, "Procedure is made to serve the law, not the law to serve procedure."

If this principle had always been fully appreciated and scientifically applied, we never should have the involved and complicated Codes of Procedure which we now have.

The chief difficulty is doubtless one that is fundamental with human nature. Man admires a beautiful and ingenious machine, simply because it is beautiful and ingenious. There is a certain fascination in the operation of complicated mechanism, apart from any consideration of its usefulness. We like to see it operate, because of its ingenuity and perfection as machinery alone, whether it be capable of rendering any service or not.

This tendency extends to what may be called intellectual machinery, as well as to machinery composed of brass or steel.

The stationary engineer loves his engine for its very intricacy; the skilled legal logician loves his complicated procedure for the same reason. Both are apt to forget that their machines are only valuable in proportion as they accomplish useful results

with a minimum expenditure of energy. The circumlocution office was not a mere figment of a great novelist's brain, nor the action of Jarndyc vs. Jarndyce purely imaginary.

There must, of course, be some machinery, if results are to be reached in any important field of human endeavor. The practical application of any system of abstract principles intended to govern the affairs or conduct of men, whether those principles be governmental, religious, or legal, will require the formulation and use of some rules and regulations, if any satisfactory results are to be attained. This seems self-evident, but experience amply proves its truth, if proof be necessary.

Such rules and regulations, however simple, constitute machinery, and the desideratum always must be the minimum of machinery consistent with the maximum of useful results. The danger is that the machinery will come to be regarded as more important than the result to be reached.

Rules of procedure constitute a large part of the machinery of the law. They may be so numerous and complicated as to make it possible for astute lawyers to begot the issue and defeat justice, or delay it until it has become worthless; or they may be so few in number and vague in terms that litigants are furnished no sufficient information of the issues which they have to meet, and thus are denied substantial justice.

The ideal system of procedure must be simple in its requirements and prompt and efficient in its results; but it must at the same time adequately protect all substantial rights and prevent the taking of snap judgments.

It cannot be said, I think, that this ideal procedure has been attained in any of our American judicial systems, although there are some jurisdictions where it may fairly be said that there has been some approach to it.

Whether it can be substantially attained is an important question, well-nigh as important as any which we have before us; for the people are demanding efficiency in the administration of the law as never before, and there is scant patience with the threadbare excuses for the frequent miscarriages of justice which have done service in the past.

It will go without saying, in this presence, at least, that if we are to have such an ideal code of procedure it must be the work of high-minded, educated lawyers. Laymen may render valuable assistance in the work, and their assistance will be welcomed; but the questions which will arise will demand for their satisfactory solution the mature thought of the scientifically educated lawyer, who has experienced the practical difficulties in the way, as well as the mature thought of the philosopher, who views the question from the student's standpoint.

Further, it may truthfully be said that,

unless both bench and bar honestly co-operate in the endeavor to apply the simplified code, it cannot succeed, even though it be spread upon the statute books.

It seems, therefore, unquestionable that, if we are to have simplified procedure which shall accomplish the desired results, we must first have a scientifically educated, as well as a high-minded, bench and bar to administer that procedure. Inasmuch as legal education is now obtained almost exclusively from the law schools, the question how we are to obtain such a bench and bar seems in popular parlance to be "up to the law schools." What can the law schools do to endow us with such lawyers and judges, and how shall they do it?

The question is not entirely easy to answer. It is indisputable, I think, that procedure is a difficult subject to teach in a law school. We have so many legal jurisdictions, each endowed with a procedure differing in greater or less degree from any other, that it would be useless to attempt even to list them all, much less to make any careful study of them all. Even the so-called code states have no uniformity, although most of them claim to be based on one model. General principles only can be taught, and even these are subject to exception so frequently that they become of little practical value. I have an impression that the school of actual practice is the only school in which the procedure of any given jurisdiction can be successfully learned. For instance, it seems to me that any attempt to teach students in a law school the various provisions of that legal monstrosity known as the New York Code, with its 3,500 sections annotated in three immense volumes, must end in failure. I say this with diffidence, because I have had no practical experience as a teacher in any school. There may be methods by which some accurate instruction in the general principles of existing court procedure can be given in the law schools, and I am willing to admit for the purposes of this paper that there are such methods and that they are being universally used. That fact, if it be a fact, has little or no bearing on the question we are now considering.

The fact that a student has fully mastered the complicated provisions of any given system of procedure, or of a number of such systems even, does not necessarily fit or impel him to render any assistance in the work of simplification. Indeed, this very fact may impel him to oppose any change. His proficiency in procedure will naturally help him to success in practice and constitute a valuable asset in his business; he will be very likely to desire to preserve the value of the asset.

The lawyer who is to practice successfully must indeed be well up in the existing system of procedure; but if he is to become a valuable worker in the movement for sim-

plification, he must have a scientifically trained and educated mind, which he is willing to devote to the subject, and he must also have the desire to accomplish the result. It becomes, therefore, really a question of scientific education and of ethics. The lawyer who has received a thorough training in the fundamental principles governing scientific and simple legal procedure, and who has a high code of legal ethics, will stand for a simplified procedure. He will look upon procedure as a machine made to serve the law, not to circumvent it.

Can the law school effectively teach these two things to its students, namely: (1) The fundamental principles governing scientific and simple procedure; and (2) a high standard of legal ethics?

I would not be misunderstood here. I recognize that there are numerous gentlemen here actively connected with law schools who are much better informed than I am as to what the law schools of the country are now doing along the lines suggested. I am not assuming to criticize the present methods of any law school. It may well be that many of them are now accomplishing all that can be accomplished in this direction; but I assume, from the fact that the question is presented for discussion, that there may be some room for improvement in at least some of the schools, and hence I make bold to suggest these two propositions: (1) Every law school should give its students a course in scientific simplified procedure, or "ideal procedure," if you choose. (2) Every law school should lay greater stress than it does now upon legal ethics, and especially upon the fundamental ethical proposition that the lawyer is a minister of justice, and not his client's hired man.

In the first suggestion I include a scientific treatment of the question of the unification of our systems of courts, so as to prevent failures of justice on account of jurisdictional mistakes, as well as consideration of the rules of procedure themselves, and all other questions legitimately connected with simplicity and efficiency in the administration of the law.

I am quite well aware that this is a difficult field. Men who can handle this subject understandingly and scientifically are not frequent. He who attempts it should preferably, I think, be a man who has had actual experience in the practice, and certainly he must be a student and a philosopher as well. But the subject is by no means entirely new. There is considerable literature already at hand bearing upon it, among which may be mentioned Professor Pound's very illuminating paper read before the Illinois Bar Association in 1910, as well as the English and German Judicature Acts of recent years. It seems to me very certain that law students who go through a course of lectures on the fundamentals of ideal procedure given by a competent in-

structor for whose abilities they have respect cannot fail to be impressed with the need of simplification of our present codes. Such a course should be fair and philosophical, and not merely captious and critical; it should be constructive, and not merely destructive, giving due credit to the useful and desirable points of present systems, and by no means advocating change for the mere sake of change; in fine, it should aim to make its students careful builders, and not mere ruthless iconoclasts.

The second suggestion, namely, that greater stress should be laid upon the ethical aspect of the practice of law, may seem trite, if not actually of the goody-goody variety, yet I venture to ask consideration of the matter for a moment.

I have no doubt that practically every professor in our law schools gives more or less instruction in legal ethics incidentally in connection with the subject which he teaches; certainly he ought to do so. This is all well and good; the more of it the better. But I think the impressions thus given are apt to be transitory. A course of lectures devoted exclusively to legal ethics would be, in my judgment, a very useful thing in every law school; a course not given by a professor in the regular faculty, but rather by some man who has attained eminence at the bar or upon the bench. It is not that the professor may not prepare a better course than the lawyer or judge, but that the words of the latter are quite sure to make a deeper impression on the mind of the student than the words of the professor, whose business it is to teach.

A sermon delivered by an eminent layman will frequently carry more weight than one delivered by a preacher, from the very fact that it is not the layman's job, and hence what he says has more the appearance of being the spontaneous and unbiased language of the heart.

In these days of marked and general decadence in religious beliefs, there is greater necessity of ethical teaching than ever before. The profession is overrun with mere money-makers, who regard it only as a business by which money is to be made, with little or no thought of the quality of the means used. We greatly need many more of the lawyers who regard the profession as a ministry in the temple of justice; for they are the men, and the only men, who will desire to make the procedure simple, prompt, and effective.

And so I return to the proposition with which I began, namely, however simple a code of procedure we may secure, we shall not secure simplicity in its administration until we have a bench and bar educated in the fundamental principles of simplified procedure, and possessing a high standard of professional ethics.

If we must depend on the law schools for the education of our lawyers, we must be

entitled to demand that their courses of study include effective instruction on these two lines. In no other way, I think, can we expect to have a bench and bar able and willing to co-operate effectively in the movement for simplified legal procedure.

The Importance of Actual Experience at the Bar as a Preparation for Teaching Law

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At the meeting of the Association of American Law Schools last year I took occasion to refer to what seemed to me the rather obvious fact that too many of our young men just out of law school were taking up the important work of law teaching exclusively, without having had actual experience in practice. As a general proposition there would seem to be nothing particularly heretical in the assertion that one who assumes to teach the principles of his art should have had some experience in the application of them. Quite to my surprise, however, my rather casual observations elicited more comment and criticism than other parts of my paper which seemed more open to question. It was this fact which doubtless suggested to your Committee the desirability of continuing the discussion at this meeting, and resulted in the request from them that I read a paper on this subject.

That a very considerable number of the growing class of law teachers are recruited directly from the graduating classes of our law schools is, I believe, a matter of common observation, about which there can be no serious dispute. It does not require extraordinary powers of observation, or very long experience in law school affairs, to ascertain that this practice is due to two causes:

In the first place, it has been steadily encouraged by some of our leading law schools, which have pursued the policy of recommending members of their own graduating classes for teaching positions in other institutions. Whatever may have been the motive for this policy, there was formerly some justification for it. The modern system of legal education has been one of extremely rapid development. The day is not long past when the law school, seeking a teacher familiar with modern methods of instruction, must perforce take a young law school graduate, without much practical experience, or forego its selection altogether. That justification, however, no longer exists. With 116 law schools in the country, of which a substantial number are members of the Association of American Law Schools, maintaining the standards required

by that Association, a rapidly growing percentage of practicing lawyers have had the benefit of thorough law school training, and there is therefore no lack of young practitioners who possess the training as well as the capacity for law teaching.

In the second place, the demand for the young graduate law teacher has not only been sustained, but has been increased, not, I believe, for any sound educational reason, but for a specious economic one—because he is cheap.

The development of education in this country presents some strange inconsistencies. With lavish generosity both public and private means have been devoted to the up-building of our educational system. Almost countless millions have been spent in buildings, libraries, and equipment, splendid monuments to their donors, which are gratifying alike to the popular desire for educational progress and to our national pride. For every material equipment of our educational institutions we have spent our money with an extreme of generosity, which can only be contrasted with the extreme of penury with which, on the whole, we have compensated the educational services of our teachers. With the notable exception of a few educational institutions, economies in the educational budget begin and end with the salaries of teachers.

This policy of exalting the incidental at the expense of the essential is producing its legitimate consequences. With changes in economic conditions which are now taking place, we are rapidly approaching a condition such that the teachers of the country must be selected very largely from practically two classes: First, the limited class whose members combine some capacity for teaching with the possession of independent means, and who are able, therefore, to take up the career of the teacher because of its inherent merit and attractiveness, irrespective of its financial return; and, second, from those who are not competent to make a success in other enterprises, and who justify in some measure the aphorism, attributed to Bernard Shaw, that "those who can, do; those who cannot, teach."

The experience of our law schools does not differ from that of other educational institutions. In the first place, many of the University law schools, though financially prosperous, are for reasons of policy compelled to maintain a meager scale of salaries in order to conform to the standards set in other departments of the University. Then, too, the unnecessary duplication of work by the multiplication of law schools has compelled distinctly undesirable economies in the matter of salaries. Every state, every large city, and, indeed, it would seem, almost every crossroads, must have its law school. Sections of the country which might be well served by one good law school must needs be poorly served by many.

The result is a steadily increasing demand for law teachers without experience in practice, not because they have not had experience, but because their selection enables the law schools to save money, or rather to maintain themselves with a wholly inadequate expenditure. Almost every mail brings to me an inquiry from some law school, asking me to recommend a law teacher, preferably just out of law school, "because we cannot pay over \$1,500 or \$1,800 a year." The young practitioner, who is becoming established in his practice, with good prospects of success, cannot be induced to give up his practice to take such a position. To the young law school graduate, who perhaps has paid his way through the law school by tutoring, tending furnace, or washing dishes, this offer naturally seems more attractive.

No school is to be criticised, of course, for economies, if its economies be not at the expense of the educational service which is the sole justification for its existence; but the question may be fairly raised whether many of our law schools, in saving money by filling teaching positions in a professional school with men who have had no professional experience, are practicing wise economy. There is, so far as we can observe, nothing peculiar about the art of law teaching, as distinguished from other kinds of professional training, which should render practical experience a detriment to successful teaching. It would seem, therefore, that the burden clearly rests upon those who counsel the employment of the inexperienced in preference to the practitioner to justify it by pointing out its advantages as an educational policy.

I know that it has been suggested that experience in practice tends to destroy the teacher's capacity for idealism in law teaching. This suggestion, however, has been directed rather toward the practice of calling men of mature years to teaching positions merely because they have had successful careers on the bench or at the bar. Teaching, of course, like any other profession, ought generally to be taken up before middle life, before the mental habits become fixed and the mind begins to lose its capacity to adjust itself to new requirements and conditions. There can be no greater error than the belief, which seems to be current in some parts of the country, that the successful law faculty can be assembled from successful judges and members of the bar, who have had no experience as teachers, and possess little or no knowledge of the progress made by the modern law school in methods of instruction, merely because they have been successful in their profession.

It should be clearly understood that nothing I may say in this paper should be construed as in any sense advocating such policy. Whether, however, the teacher of law, taking up his career as a teacher before middle life, should not have had experience in prac-

tice, or at least whether he should not continue his practice concurrently with his teaching for a time, is quite a different question, which I believe has a distinct bearing on the efficiency of our law schools.

I do not understand that there is any substantial opinion that experience in practice is detrimental to the law teacher, assuming that he possesses in other respects the teaching gift. The fact is, the teacher is born, not made exclusively by training or environment. No kind or amount of training or experience will make a man a successful law teacher unless he possesses the gift. The point I would emphasize in this paper is my firm belief that the man who would become a law teacher, and who possesses the talent for stimulating intellectual activity in others, will, as a law teacher, possess greater power, exert a wider influence, and render a more useful service to his students and to his profession, if he has had experience in practice, and there is always the danger that, if he takes up his teaching without such experience, he will lack the intellectual balance which should come from a practical knowledge of his profession, and he will inevitably be a stranger to its sentiments and traditions.

We have been developing legal education in this country very much as though the law were a pure science, so that, with the authorities before us and with the facts in any given case ascertained, we can, by a system of inductive reasoning, proceed unerringly to the correct result, which should be the law of the case. In an ideal system law should, and perhaps could, be purely scientific and logical; but the fact is, as the law student discovers, when he begins his practice, logic oftentimes yields to practical considerations, which with the court outweigh his most logical arguments.

As a student I remember that the New York rule that a factor is treated as a fiduciary as to the proceeds of the sale of merchandise committed to his care, irrespective of his methods of dealing with them, or the state of his accounts, or the time and manner of settling them, seemed to me peculiarly unscientific, and to merit all the criticism that we poured out upon it. A few years' experience in a busy office, which was frequently called upon to enforce the liability of consignees of merchandise, threw an entirely new light on the subject, which leaves me, as a practitioner and as a teacher of law, quite content with the rule. I might multiply similar examples with which any practicing lawyer is familiar, such as the rule in force in many jurisdictions that a mortgage upon a changed stock of goods, left in the possession of the mortgagor and giving him power to reinvest the proceeds in other goods, is void, or the New York rule as to the tentative quality of trusts of savings bank deposits.

It may be that the accepted views on these

subjects are not logically correct, and that these rules are not in all respects scientific; but the important point is that with experience in practice comes a new point of view—the point of view of the legal profession generally. Can it fairly be said that we are doing our duty to our students if we have not given ourselves sufficient contact with the profession, by actual experience in practice, to understand that point of view and in some measure to impart it to them?

I yield to no man in my enthusiasm for the law school which devotes itself primarily to training its students in the theory of law from the viewpoint of principle and its historical development, rather than in the mere memorization of rules and precedents.

In this distinction is one which may account for all the difference between the real lawyer and the mere time-serving hanger-on of the profession. The law school should train its students to search for the underlying principle, and the reason for it historically which lies back of every rule and every maxim of the law; for, although law may not be purely logical or a science, nevertheless the scientific method of study and investigation is the touchstone which yields golden results in law study. But our aim must be to make such training of practical value to our students, who, after all, are not being trained as legal historians or writers on jurisprudence, but to become practitioners of their profession. Our speculation, therefore, must not become too attenuated, and our field of investigation should be marked out by one who knows the kind and in some measure the limits of the experience for which a young lawyer is destined.

I think, in this connection, that it is perhaps a fair question whether the law school might not direct its attention with profit toward giving more training in the application of legal principles. For example, one might read all the cases and become thoroughly familiar with the principles relating to the law of wills, without understanding the practical problems which present themselves in drawing a will, or knowing, for example, what power it is expedient to give an executor or testamentary trustee. Similar observation may be made with respect to the preparation of contracts, mortgages, certificates of incorporation, etc. This kind of knowledge will, of course, be "picked up" by the young lawyer in his practice, but in a desultory and unsystematic way. It is possible to impart much of this knowledge in a systematic, not to say scientific, way in the law school as an incident to the substantive law courses to which it relates, provided, however, the instructor has had experience in practice and has become familiar with the usages of the profession. That one who had never had experience in practice could accomplish much, if anything, in this direction may be doubted, since the requisite knowl-

edge will not be found in the books, but may be gleaned only in the school of practical experience.

Then, too, in a purely logical and scientific system each fact upon which the application of the principle of law depends must necessarily possess its own peculiar weight and value. The ability to assign to each fact its proper weight and value, which is essential to determining what is the true rule of law in a given case, comes in full measure only with practical experience. Can, for example, the law teacher who has never seen a bill of lading (and I regret to say that there are such), or who is unfamiliar with current usages with respect to these documents, teach or advise with respect to the nature and extent of their negotiability, or (what is becoming an important function of the law teacher) participate in the preparation of legislation affecting that subject? Would not the lawyer, other things being equal, who had had actual experience in applying to and securing from the courts preliminary injunctions in equity causes, be better qualified to teach the principles of preventive jurisdiction of equity than a man who had never prepared, or perhaps seen, a set of motion papers on such an application?

This is perhaps only another way of saying that the law teacher ought to possess a good deal of practical wisdom, the kind of wisdom which comes of knowledge of men and experience of affairs, as well as of the technical side of practice. If so, I doubt whether any one will dispute the correctness of the proposition, and certainly there is no kind of experience better adapted to the acquisition of such wisdom than the active practice of the law.

It is a commonplace saying that one can acquire an adequate knowledge of substantive law only by knowing thoroughly its pleading and procedure. It is for this reason that a thorough study of common-law pleading and procedure is of the first importance in any well-arranged law school curriculum. When the student has become familiar with the pleading as it existed at common law, he not only has a good introductory knowledge of substantive law, but he knows at first hand the reason for the peculiar form and application of the rules of substantive law. Despite the numerous attempts at simplification of procedure, our procedure has in actual practice become more complicated than it was at common law, although possibly less technical and with a penalty for error less severe. Our law schools have conspicuously failed to train adequately their students in procedure, and because of inherent difficulties it may be doubted whether, beyond imparting the underlying principles of pleading and practice, the law school can give the student as much aid in this direction as actual experience in an office.

Frankly recognizing this fact, all the law schools in the state of New York have united

in requesting our Court of Appeals to require that candidates for admission to the bar shall supplement their three years of law school with at least a year in an office before presenting themselves for bar examination in pleading and practice—a recommendation which was concurred in by the Board of Bar Examiners and the New York County Lawyers' Association. This important reform has not yet been accomplished. The result under existing conditions is that the law school graduate and often the young lawyer is conspicuously wanting in one branch of training which is absolutely essential to a comprehensive understanding of substantive law and which is essential to making him a well-rounded lawyer.

No law school graduate, when he leaves the law school, is well grounded in the practice of New York, for example; and the same statement is probably true with respect to most of the other states. To insist that a man with this limited experience has had the requisite training to fit him to teach substantive law, to say nothing of practice courses in the professional school, is to ignore one of the most fundamental principles of legal education. Yet we have accustomed ourselves to ignoring it until some of our educators seem surprised that any of us should raise his voice in protest against it.

But it is not alone on the intellectual side that experience in practice makes a valuable contribution to the training of the law teacher. The law teacher has indeed missed his calling who has nothing to offer his students but the solution of the purely intellectual problems of the law. To-day it is more than ever incumbent on the law teacher to inspire his students with a professional spirit and to transmit to them something of the ideals and traditions of the profession.

To the teachers of law the legal profession has committed its future more than to any other class in the community. It is no exaggeration to say that the ideals of the profession and its proficiency as a whole will in the next generation be more influenced by the law schools of the country than by the courts and the individual members of the bar. That this is so is due primarily, of course, to the sweeping changes which have taken place in methods of legal education during the past generation. The lawyer of a generation ago received his training in the law office. There he gradually grew into his profession, absorbing unconsciously from his environment something of the professional spirit and the ideals and traditions of the law. Whatever may have been the faults of this method of training, and they were numerous, and their number has increased under modern conditions, it was at least extremely practical in character, and the fledgling lawyer acquired in the hard school of experience something of the lawyers' point of view, even before his admission to the bar.

To-day the lawyers of the country are acquiring their legal education in its 116 law schools, and these are becoming more and more the dominating influence in shaping the minds and characters of the members of the bar. A few years ago most of them occupied only a few months or a year of the students' time. Now there are few schools, and none worthy of the confidence of the profession, which do not absorb three years or more of the student's life in preparing him for the bar. Taken at the age when he first experiences the zeal for professional training, when his mind is flexible, at just the period when his habits of thought tend to become fixed, and subjected to the thoroughgoing training of the law school, it would be strange, indeed, if the young lawyer did not bear the indelible impress of the law school in mind and character.

But there are other reasons for the increasing professional influence of the law school, which are dependent on changes taking place in the profession itself. There is a growing lack of that coherence and solidarity in the profession which are essential to its proper esprit de corps. The greater concentration of professional business in the large cities, as well as the normal growth in numbers of the profession, has resulted in an enormous increase in the number of lawyers in our large cities. Anything like personal acquaintance among the 12,000 or more members of the New York City Bar is obviously impossible, to say nothing of the cultivation of those professional and social relations which are essential to the perpetuation of professional ideals and traditions. The same condition exists, only in less degree, in each of the 110 cities of the United States having a population of 50,000 or more. It seems inevitable, therefore, that the law school should become more and more the common point of contact among the members of the profession, and that upon it will fall more and more the obligation of transmitting to the younger generation of lawyers the ideals, sentiments, and traditions, the professional spirit, in short, of those who have gone before.

How can the law schools render this important service to the profession and to the community at large, if they persist in the policy of filling their faculties with teachers who have had no real contact with the profession and have learned nothing of actual experience of its sentiments and traditions? Each year some hundreds of men are admitted to the bar in New York, whose practice, largely in police and other minor courts, will never bring them into intimate association with those members of the bar who give it stability and sound character. There are some hundreds more who will have better association, but to the development of whose character and to whose relationship with practice no sound lawyer will ever give a moment's atten-

tion. This is due, not only to the great numbers of the profession in our large cities, but to the organization of the modern law office, which sacrifices the personal relation between the older and younger members of the bar to office organization and efficiency.

This is a heavy burden to cast upon the future well-being of any profession, and I regret to say that it seems to me that the profession is showing the effect of it not only in New York, but throughout the country. Nor is it alone in the lower strata of the profession that there is a want of fidelity to professional ideals, or rather a want of realization of them. A survey of the history of the legal profession in this country compels the reluctant conclusion that the influence and prestige of the bar are on the wane. I do not believe that this is a permanent condition. Indeed, it cannot be, if the law schools exercise the influence on the profession which I believe the next 25 years will see them exercise. This condition is doubtless due to complex causes, but among them will be found the failure of the profession as a whole to lay firm hold on the ideals which influenced the bar of the country in the earlier days, and especially the failure to cultivate the professional spirit which emphasizes devotion to the skill and integrity of the profession above its material gains; the spirit, in other words, which makes the lawyer the skilled and wise counselor, but never the servant, of the client.

We are only beginning to realize what a tremendous responsibility this places on the law schools and the splendid opportunity which it opens up for them. The opportunity for the young lawyer to come into intimate contact with a group of law teachers, who are real lawyers, by experience as well as training, who are presumably idealists, since otherwise they would not have sought the teacher's career, who love and honor their profession, and, finally, who know from actual experience something of the demands which the practice of law makes upon the lawyer, which are of inestimable value to him and to the future of the profession.

The professional law school ought, of course, to possess the scientific spirit which exists in the scientific school or in the college, or at least so much of the college as devotes itself to real scholarship. (Sometimes I am prone to think that our colleges present more the aspect of social and athletic clubs than of real educational institutions.) But they ought to possess a great deal more. They ought to have the professional atmosphere and be permeated with the professional spirit. They should be centers of professional influence, in close contact and in harmony with the bench and the bar.

But this is difficult, if not impossible, with a corps of teachers whose life experience has been practically confined to the college and

law school, and whose instructors in turn have had only academic experience. How can there be doubt of the wisdom of the policy of doing everything that may be done to bring the law school into closer relations with the legal profession, to make the law schools themselves centers of professional influence and disseminators of professional ideals? Yet we are now engaged in a process of law school isolation. We are making them, I will not say, too academic or too scientific, but too little professional, and we will perpetuate this isolation from generation to generation, unless we insist as a general rule that our teachers of law shall have had some general experience in practice.

Just what should the law school do to secure the law teacher best equipped by training and experience to take up the career of a teacher of law? Obviously the first step is for the law school to offer sufficient salary to attract the man of talent, who has a future in his practice, to give up his practice and ultimately to devote himself exclusively to law teaching. I do not mean that the law school must compete in the matter of salary, with the best, or even the better, professional incomes. There are obvious advantages in the career of the law teacher, coupled with opportunities for important public service, which compensate within reasonable limits for the loss of the income which may be earned in practice. But, on the other hand, the practitioner cannot be expected to compete with the young man just out of law school in the matter of smallness of salary.

The law school which has the proper regard for its own important function, and which would justify its right to exist at all, should therefore offer a salary sufficient in amount, when coupled with the advantages of the law teacher's career, to attract to it the benefits of practical experience as well as the natural gift of the teacher and adequate professional training. My own observation is that generally such a salary, if the best results are to be obtained, ought to bear some rather close relation to the salaries of the judges of the highest appellate court in the state where the school is located.

But with adequate provision for salaries, the selection of a law teacher who has had experience in practice is still a delicate matter. He must, of course, possess what I have termed the "teaching gift." No amount of experience or training, no ability for legal authorship, however great, will atone for its absence. Its presence will be revealed only by the test of actual experience. This fact does not lessen the perplexities of the law school administrator, who is seeking a law teacher who will be willing to abandon a law practice for the uncertainty of an untried career.

A helpful expedient, which possesses the double advantage of fairness to the law

school and the teacher, is that adopted in some schools of engaging the services of a young practitioner, to give one or two courses in conjunction with his practice, until he has demonstrated his capacity for law teaching. This plan can be adopted with advantage, especially in the larger communities. In the case of schools located in smaller communities, there will be no lack of members of the bar in other localities, who have had experience in practice and who have capacity to teach law, demonstrated, perhaps, in some other law school, provided adequate salaries are paid.

Ultimately, when with experience in practice he has become a well-rounded lawyer, he should devote himself exclusively to law teaching, at least so far as active practice is concerned, as he undoubtedly will do if he has the teaching spirit and the salary is fairly adequate. I say exclusively, because I believe the profession of law teaching is not only worthy of a man's best efforts, but under conditions which exist, or should exist, in the law school doing its duty by the profession and the community at large, his best service is absolutely demanded.

This is the ideal method of developing a faculty of law teachers; but my belief in the importance of having a faculty very largely made up of lawyers who have had experience in practice is so firm that I would make some concessions, when needful to obtain it. I would be willing to have some members of a law faculty actually engaged in practice, provided, of course, they had had adequate training, possessed the teaching spirit, and were devoted to the best interests of the law school. This, in my judgment, would be much preferable to a faculty made up wholly or largely of teachers who have had no experience in practice.

In dealing with the subject I am quite appreciative of the difficulty of generalizing upon any subject as complex as the capacity of individuals to teach a difficult and complicated subject like the law. I am aware that this or that example of a brilliant law teacher who has had no experience in practice will be cited. To this I have two answers: First. I have known such; but I have never known of any whose ability as a teacher and whose capacity for service would not have been increased by experience in practice. Second. I am not laying down any inexorable rule, to be followed blindly under all circumstances. I would not even say for myself that I would not choose a teacher who has had no experience in practice. Personality, individual talent, and capacity must always be of primary importance in making a selection, and they *may* be allowed to outweigh practical experience in a given case. What I have sought to point out is the unwisdom of a pronounced tendency in the selection of law teachers. What may be justifiable in a

given case may be unjustifiable, or even pernicious, as a general practice. That is, I believe, the exact situation with respect to the tendency to select our law teachers without experience in practice. Whatever justification there may be for it in individual cases, I am convinced that as a practice it is bad, and I hope that we may ultimately see the general adoption of a distinct policy in favor of the selection of teachers who have had experience in practice.

The Recent Movement Toward the Realization of High Ideals in the Legal Profession

By CHARLES A. BOSTON
Of the New York Bar

Owing to the length of Mr. Boston's very interesting and instructive paper, it is impossible to report it in full in this issue of the Review. Mr. Boston spoke of the comparative indifference of the judiciary and the bar in the United States to the administration of corrective discipline to offending members of the bar, until the American Bar Association, in 1905, began its work for the formulation of canons of legal ethics for the guidance of the bar, which resulted in the approval of such canons by the Association in 1908. He described in detail the many activities since that date of bar and other associations in various parts of the country in raising the morale of the bar, by approving these canons and calling them to public and professional attention, as well as by more vigorous prosecution of flagrant offenders. He showed that these conceptions of the high duties and moral responsibilities of lawyers are neither exclusively American nor modern, but that they characterized the profession in ancient Rome and monarchical France, prior to the French Revolution, as well as in other countries of modern Europe. They were also formulated by State Bar Associations in many states, and by statute law in some states, before the adoption of canons by the American Bar Association. The American Bar canons have since been adopted by at least twenty-two state associations.

In New York the Court of Appeals has adopted rules requiring applicants for admission to the bar to study them and pass an examination upon them, as a prerequisite to admission to practice. In New York county the Association of the Bar has developed through its Grievance Committee an unprecedented activity in investigating complaints against members of the bar, at great expense

to the Association, and in prosecuting before the courts those found to merit such prosecution. Since 1905, 2,424 complaints against members of the bar in New York City (Manhattan and the Bronx only) have been investigated by this Association and most of them dismissed as without foundation; but in the same period 124 offending lawyers have, mostly through the efforts of this Association, been disciplined by the court. The Membership Committee of the New York County Lawyers' Association found nearly 900 men practicing law without a license, and took steps with commendable results to put a stop to this pernicious practice. The Committee on Professional Ethics of this Association has been empowered to give advice to inquirers upon the propriety of professional conduct, and interesting questions of various nature have been submitted to and answered by it; and these questions and answers are widely circulated.

The Boston Bar Association has approved the ethical canons of the American Bar Association, except that it has adopted a more stringent regulation respecting contingent fees; it condemns any agreement for a fraction of the recovery. The Pennsylvania Bar Association has approved the canons of the American Association, but has added some canons upon judicial conduct. The Bar Association of the City of San Francisco has adopted its own code, in which it particularly dwells upon the duty of the lawyer to aid in and not to hamper or thwart the administration of justice. The Central Law Journal considers it the duty of every member of the Bar to be enrolled as a member of his State Bar Association and the American Association, in order to contribute his influence.

In the Chicago Bar Association the Board of Managers has considered the ethical features of various matters of professional practice which have been brought before it, relating to the newspaper discussion of pending litigation, the retention of the name of a judge in a firm from which he had retired to take a position upon the bench, and the giving of personal letters of commendation by judges to members of the bar, who use them for soliciting business. A committee of the Chicago Bar Association investigated the solicitation of business by lawyers, and found five groups of offenders: Those who solicit business from the county jail, frequently under false pretenses; those who abuse the privilege of suits begun by so-called poor persons; those who try their lawsuits in the newspapers; "ambulance chasers" (many of whom bring suits in which no legal liability exists); and corporations and associations attempting to conduct law business contrary to law.

In New York corporations have been forbidden by statute to practice law, and the Court of Appeals has condemned the prac-

tice; while committees of the Association of the Bar of the City of New York and of the New York County Lawyers' Association are now engaged in investigating the relations of such corporations to their paid attorneys. The Committee on Professional Ethics of the latter Association has recommended the establishment of Boards of Legal Discipline to investigate complaints of misconduct against lawyers, with more power than the Grievance Committees of the Bar Associations, and with power over lawyers similar to the State Medical Boards in their supervision of physicians.

Mr. Boston directed attention to many other recent activities, undertaken or calculated to give force to the principles of the American Bar Association's canons of ethics for lawyers, among which are the group for the study of problems of professional ethics

in New York City; the Hubbard course of Legal Ethics at the Albany Law School; the lectures on the subject at the Educational Alliance Hall, and under the auspices of the Board of Education in New York and Brooklyn; the recent code of ethics adopted by the American Institute of Consulting Engineers; and recent or forthcoming publications on the judiciary and the administration of law, unethical practices in bankruptcy, and the ethical principles of law.

He also spoke of the action of the National Credit Men's Association in commending to the Commercial Law League of America some canons upon the standards of morality and efficiency in the practice of commercial law. He strongly advocated further activity on the part of the American Bar Association by adopting canons respecting judicial conduct.

Letters from a Lawyer to His Son

By ARTHUR M. HARRIS

Of the Seattle Bar

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[A condensation and compilation of letters from a lawyer to his son who is about to enter upon the practice of the law. The salutations and matters of private interest are eliminated. Letters I to X were published last season in Numbers 2 and 3 of Volume III of the Review.]

Letter XI

HOW much capital should a lawyer have to commence business with? In every case this may be answered by saying that he should have enough to support life decently until he can derive some returns from his practice. It can be plainly seen, from that, that the place which will soonest yield the young lawyer some real money for his work is the place where he can afford to start with less cash in hand. Location decides the amount the lawyer should take into the town with him.

Now, of course, there are fellows, whom we all know, who have started in

this business on a shoestring. Bill Williams came into Kerr County twenty years ago so poor that he had to go to milking cows to make enough to eat. He is prosperous now; but, while rustling around and doing general chores, Bill was wasting valuable time that might have been saved to him, had he brought a couple of hundred dollars with him.

As I, have said before, starting in a big city means getting into somebody's office as a clerk; working night shifts in the postoffice, or wherever there is an opening; or being among the fortunate number who have private means enough

to lift them above the anxiety and worry of living from hand to mouth until they get a start.

Going into the country to practice does not mean that you are going to make money right away, and, personally, I should be sorry to see you start up anywhere, East or West, with less than five hundred and fifty dollars. I add that fifty, because the tide may turn in your favor just as you spend the five hundred and forty-ninth dollar. Poverty, too stern, has its dangers. It tends to make a man disregard the fine points of ethics, and it leads to practices sometimes which are not only not ethical, but are downright dishonest.

We will assume that you have decided to locate in Grasstown, a flourishing city west of the Rocky Mountains. You have looked in the *Gazetteer*, you have written the Commercial Club, and Bill Smith, who practices law thirty miles from Grasstown, has written you a glowing account of the possibilities. You have found that it is located on two railroads, and, according to the Secretary of the Commercial Club, two or three more great transcontinental railroads are fighting for a chance to come in. You have found that it contains five churches, of as many different denominations, as well as a Salvation Army Barracks and a temple of Christian Science. Two weekly newspapers supply the inhabitants with all the information and amusement they need, outside of the occasional visit of a theatrical company. There are three banks, the First National, the Farmers', and the Commercial Savings and Trust Company.

Now comes the question of the number of lawyers who are already living on the good people of Grasstown. This is the important question, and the one to be cogitated upon when debating the amount of money a man should take in.

If Grasstown had only a few hundred people, and were one of those towns which are compelled to advertise in the newspapers for a lawyer to come over and help them, a man would not need much more than his car fare; but Grasstown sprang up on the old original Oregon trail, has been in business at that stand for twenty years, and has, according to all the reports, half a dozen lawyers in active practice there. Bill Smith told you that four or five of those lawyers are poor old chaps, who got to the Bar when all the law called for was a primitive knowledge of the three R's, and that you can skin them to a frazzle. Maybe so. You want to remember, though, that all those old men are probably related, directly or indirectly, to every one in the community, and that your business for a while will have to come from the relations far removed. The near blood will still figure on sticking to the old men.

Still if Grasstown can support six lawyers, you are pretty safe in assuming that it can support another one, especially as it is in the midst of an enterprising and but partially developed agricultural country. You can see that you will have to take a little more money in with you in order to play a waiting game, in the hope that something will turn up to put you on your mettle and give you a chance to demonstrate your ability. If you can lick old Uncle Ben every time you meet in court, why, Uncle's nephews will be sneaking around to your back door after a while trying to hire you. In a more remote Western town, every one of the six lawyers would be comparative strangers, and every one would have more or less of an even break. The chances are you would not have to wait so long there, nor need quite so much money, as you would have to have to go to Grasstown.

Another thing to consider, in the line of what we may call competition, is the number of real estate men in any given town. Yes, real estate men. The real estate men are the little foxes that spoil the vines for the young lawyers, and for lots of old ones, too. Every mother's son of them is doing a good-sized law business without having the papers to show for it. Every one of them, you will find, is a notary public, and I want to tell you that you are going to be surprised to find what an amount of ready revenue there is in being a notary. The real estate man is making deeds, drawing notes, chattel mortgages, bills of sale—in fact, he is doing all the little things which properly belong to a lawyer, and the income from which would be more than sufficient to keep a young lawyer going until bigger business comes in. They examine abstracts, too, and render informal opinions—and unless the abstract is full of technicalities those fellows can get a pretty good line on it. If ever you get to wondering why those abstracts don't come into your office to be examined, just take a stroll into the offices of your real estate friends and you will see where they have lodged.

Further, the real estate man can oblige you with a legal form for almost every emergency and every legal purpose. They draw wills—and to have a real estate man draw your will is just one shade worse than drawing it yourself. We don't object to their doing that. Not without significance was the old lawyer's toast to the testator who draws his own will. However that may be, the fact remains that they are handling a lot of small matters which are properly in your jurisdiction, and which, if you could get them, would very materially affect the amount of capital you would have to take into the town with you. In looking

over a town, just take the trouble to inquire into the real estate situation. It will be important information for you in more ways than one.

All these things, small and large, have something to say about a man's prosperity, and accordingly are worthy to be considered in connection with the matter of capital.

Letter XII

FROM what I have seen, and from what you have said of him, I think that John Dunstan would be a good partner for you to have. A good law partner is like a good wife—pretty hard to find, but a great help. I notice a pronounced tendency among the young lawyers of to-day to form partnerships and hunt down their prey together. It is a great help to have a comrade in the dreary days, and, when things are coming very slowly, to exchange emphatic views on the idiocy of a darkened public that refuses to avail itself of so much combined legal talent and ability. It is a pretty true old saying that two heads are better than one. It helps to minimize error for the two of you to go over your pleadings together. One will see a point that the other will not; one will recall an essential principle that the other has overlooked or forgotten.

No two men have exactly similar temperaments. Every man will make his own circle of acquaintanceship. Through a partner, the lawyer is enabled to reach clients that he never would otherwise have come in touch with. One of the strangest and yet most successful partnerships that I have ever known was formed between a man who was a rigid teetotaler and one who was frequently hovering on the border line of sobriety and intoxication. The sober fellow was a first-class student, and as able as his years and experience would permit. The

other one seemed to get what law he knew by a peculiar process of absorption. He was blessed, however, with excellent reasoning powers, and had, moreover, considerable natural eloquence. He could try a case very successfully, although his partner usually had to be on hand to prompt him when the tangle threatened to become technical and involved. This man was never found reading a law book, but he did love to splurge and splutter to a jury. He had what is called the oratorical temperament, and the constitutional indolence that usually accompanies that gift.

More than once I have seen the steady boy struggling upstairs with his partner hanging heavily on his arm. He would cache him somewhere in the back office, and in emergencies would toss him into the clothes closet. I frequently dropped into their office, and as I was a youngster among youngsters there was no attempt made to conceal the skeleton in the closet. One day we were sitting around the office, laughing ourselves into tears at the unbridled witticisms of the boy who was in an early stage of intoxication—a period when his whole soul seemed to expand and his genius flow forth in a stream of really brilliant conversation.

Just then we heard a footstep in the hall just outside the office, and with one consent we leaped upon the orator and stowed him in the large roomy closet, where the coats were hung and any miscellaneous junk around the office was stored. The visitor proved to be a silver-haired, fine old lady, very dignified, and with that peculiar queenlike carriage that some ladies seem to assume with advancing years. She had come about a matter of probate my two friends were handling for her. I, of course, turned to go, but certain strange and unusual noises emanating from the clothes closet caused

me to stop in case my services should be needed to suppress a rebellion. Bang, bang, on the door, while a smothered voice called agonizingly for liberty. My friend flushed to the roots of his hair, and the old lady could not conceal her amazement and concern.

There was nothing to do but let the prisoner out. His face was flushed, his hair was ruffled, and he looked rather sheepish; but there was a hope that the visitor would attribute that to his being locked in the closet. Not wishing to trust himself to stand, he subsided heavily into a chair, and explained that the lock had caught and locked him in the closet. I thought that perhaps he had been sobered up a little; but my heart sank when he launched into a glittering panegyric on liberty, and how dear to the prisoner immured in deepest dungeon was the light of the day and the breath of the morning, and so on.

Instead of discovering his real condition, the good old lady thought that he was a very clever boy, and she looked on him with something of the expression of a fond mother with a bright and precocious infant. He skipped from one thing to another, and wound up at last by repeating whole reams of Tennyson's "In Memoriam" so feelingly and meaningfully that the poor old lady was compelled to dry her eyes more than once. When we were alone we gave him the third degree, and he confessed that he never would have come out, but he thought he heard a mouse in the closet, and mice, above everything else, he detested.

This rattle-brained fellow afterwards rose to high position in his natural field of politics, and one of his first exercises of power was to put the old reliable partner on the bench of the United States Circuit Court.

That was a partnership which proved

a happy one. There have been others which have ended almost tragically. I knew a young chap who tied up with a man who turned out to be a thorough rascal. For a number of years they held together, and everything seemed to be going along nicely. They were in a fair way of business, and making a little above their expenses. Every cent that my friend could make he salted down against the time when he should be married. He was engaged to a very nice, good girl, and together they watched the slowly growing nest egg. One way and another, most of the boy's own money was in the partnership bank account and subject to withdrawal by either partner. This arrangement cost him dearly, for one morning the worthless partner skipped the town, taking with him almost every cent the other man had in the world. Such instances, fortunately for the honor of the profession, are very rare.

When you begin to take in money, have an account in the bank where the firm's money may be kept separately. As a lawyer you will be trusted with a good deal of money from time to time. Be careful how you handle it. Carelessness in these things leads to chronic embarrassment, and frequently makes necessary a lot of humiliating explanations, and, if persisted in, will remove the fine edge of your credit—without which, nothing.

Letter XIII

THERE are ways and ways of practicing law. One man can go into a city—any city you like to think of, preferably a large one—without a cent in his pocket and can commence at once doing a law business. How? Very easily. He will probably bum a couple of weeks' desk room in some law office. His next

step is to go up to the justice courts and get a big bundle of blanks—forms of Notices, Writs of Garnishment and Attachment, etc. He then proceeds to breezily canvass for collections, and can always succeed in coming back to the office with a big batch of bad bills. From the various creditors he has found out where each and every debtor is employed; then, seeing that he needs the money and cannot wait for excuses, he will not even take the time to write a dunning letter, but will immediately draw up his complaint, get out the writs of garnishment, and by the end of his first week he will have the salaries of twenty men tied up.

This young man is thoroughly worldly wise. Professional ethics is a matter of pleasant jest with him. "Fine," he will agree placidly, "beautiful spirit; good idea, you know. But then those things were drawn up by a bunch of old stiffs, who were well established and could afford to follow those rules, supposing they care for them themselves. Not for me. I can sit in this office and rot, yes, rot before any one is going to find their way up here to see me. No, sir; I have no use for the American Bar Association's Code of Ethics. I got to get the business, and if the mountain won't come to Mahomet—you know the rest. Well, I'm Mahomet."

That is one way, and an easy way, of starting to practice law. In fact, for a certain type of man, that is the only way that he ever can or ever will practice law. For the so-called ethical lawyer the collection man has a contemptuous pity, as an impractical dreamer and a poor old stick in the mud.

Now, I am not going on record to the effect that it is entirely wrong for a lawyer to solicit collections. It is not unlawful; nor do I think that it could be made the ground of disbarment for

soliciting legal work. While the collection business is related to the law business, it is not peculiar to the law. Many of the most successful collection agencies are run by men other than lawyers. It cannot, therefore, be a solicitation of business within the meaning of the disbarment statutes. Such statutes relate in most states only to champerty and maintenance, and are almost useless; for only once in a lifetime do you hear of a lawyer being disbarred for the infraction of those ancient laws.

There is one thing about the collection business that you may rely upon as being very true; it is a barrel of undiluted trouble, and the money made in it is very hardly earned. If you are flooded with collections, you will have no chance to practice law. There will simply not be time enough for you to do so. Then, when you have finally located a slippery debtor, and have him all nicely and securely garnisheed, he will probably bob up with a claim of exemptions, and you will be left holding the sack. In the Western states, where they have had one or two Populist legislatures, you will find the exemption laws extremely liberal to the debtor. I have no quarrel with such liberality; in fact, I think that such provisions are wise and humane and just.

There is a growing opinion among lawyers and laymen that the garnishee laws are much abused. Some collection agencies take out their writs of garnishment by the barrelful. It is a severe hardship to subject a man and his family to the privation of having his salary denied him at the end of a week, especially in view of the fact that the court issuing the writ of garnishment has not yet passed upon the merits of the claim. Under the present loose system, men and their families are made to suffer for what frequently proves, upon the trial,

to have been an unjust claim. No bond is required to secure the writ of garnishment; it is issued upon the affidavit of the creditor or his agent. I am decidedly of the opinion that, were it necessary to give bond for the justice and lawfulness of the claim upon which the writ is sued out, much injustice would, in some small measure, at least, be averted.

Now, I do not desire you to become a collection lawyer. That is a name easily acquired and very difficult to lose. Probably half the men who use the words "collection lawyer" do not fully know what they mean by them; yet they have a feeling that somehow the man to whom they apply the term is not just right. He is not playing the game. He is running around the hurdles; he is elbowing the runners. The chief cause of this dissatisfaction with the unscrupulous practitioner is, I think, his unblushing denial of all those rules which tend to promote the dignity and nobility of the profession of law. Whether you are successful in your practice or not, I beg that you will fall into no cynical, contemptuous, or slighting attitude towards the legal system under which we live. Do not allude to yourself, even playfully, nor allow others to do so, as a "shyster." The proper meaning of this disagreeable epithet is one who hangs around the police courts, seeking to defend the petty criminals that come up for trial there, and who is not a regularly admitted and practicing attorney.

There are malcontents enough; there is already too much unreasoning prejudice against the law for its practitioners to ever, even in their lightest moments, allow themselves to be heard alluding to it jestingly or indiscreetly. Do not think that the great body of our statutes and their interpretation is the meanest work of men. Every law in the Code, every

true and honest decision, is the expression of the most serious and earnest thoughts a civilized community entertains concerning the proper relations of the individual members of society one to another. The law is a truce between man and man, under which all agree to live, without which there must be everlasting discord and all the riot and confusion of barbarism. Let the civil gov-

ernment change as it may; let it swing from a tyranny to a republic, and back again; still the legal system, in its essence and spirit, can never be abandoned. The real enemies of society are the malicious and the thoughtless, who confuse the corrupt administration of law with the pure spirit of the law, and clamor for the abolition of the wisdom and experience of two thousand years.

Notes and Personals

Over two years ago there was published in one of our contemporaries (22 Green Bag, 59) a memorandum or prospectus of a proposed legal publication to be known as the "American Corpus Juris" and to consist of a set of books which shall contain "a complete and comprehensive statement in adequate perspective of the entire body of American law." The promoters of this undertaking are Mr. Lucien Hugh Alexander of the Philadelphia Bar, who writes the "memorandum," Dean George W. Kirchwey of the Columbia Law School, and Dr. James De Witt Andrews, author of *Andrews' American Law*; and on the ground that "such a great movement as this ought to be saved from the bane of commercialism," they modestly request some philanthropist to come forward with a million-dollar foundation to finance the undertaking.

The promoters do not claim that the idea is original with them, but attribute it to Mr. Justice Wilson of the United States Supreme Court, who himself "undertook the task as a purely individual enterprise, but did not live to complete it." The claim is, however, distinctly made that Mr. Justice Wilson is "the only one" who has yet attempted such an undertaking. This statement is rather startling in view of the fact that, as every lawyer and judge in the land knows, two different private corporations have, at an expense of several million dollars, each produced an encyclopedia of law which also "covers the entire body of American law" and, "under a logical system of classification," not as digests or encyclopedic digests, but stating what the law is as it has been decided and citing all of the cases. Each of these encyclopedias has many thousands of subscribers and has been indorsed and cited by practically every appellate court in the United States.

It is not our purpose to advertise these works, and if the promoters of the *Corpus Juris* can improve upon them the profession will wish them Godspeed, but it would seem that they should not entirely ignore the existence of these works and ask a million-dollar foundation for the ostensible purpose of entering a virgin field in the interest of the legal profession and producing "that for which the call has gone out now at intervals for more than a century, but which has never been answered." The "memorandum" throughout seems to be written with the purpose of conveying the impression that the *Corpus Juris* is to be a work of an entirely new and distinctive character for which there exists an imperative demand, whereas a careful study of the plan reveals nothing of value which is new or original, but merely a purpose to do over in a less complete and comprehensive manner something which has already been done.

The Review, after long consideration and examination of the project, desires for the benefit of its subscribers to consider the value and practicability of the scheme proposed for producing this particular work and the qualifications of the promoters for the undertaking and execution of the task.

Upon the first point it is stated in the "memorandum" that, "based on the most careful calculations," it is the belief of the promoters that the work "can be produced in about twenty volumes of one thousand pages each, including an index and table of cases." When it is considered that the encyclopedias above referred to, using the most condensed form practicable and with an elaborate system of cross-references to avoid duplication, have each required more than twice this number of volumes of about 50 per cent. more pages per volume to cover this same "entire body of American law," it

seems inevitable that the Corpus Juris must either omit entirely very many subjects of the law or else consist merely of a statement of the most elementary "hornbook" propositions. It is vain to suppose that these or any other set of men, however learned, can lay down merely what they conceive the law ought to be with the result that it will be adopted and followed by the various courts of our many independent state and federal jurisdictions.

There are few questions of importance upon which there is not some conflict of judicial authority, and any law book to be of value must recognize this conflict, stating fairly and fully the different lines of reasoning and citing all of the cases in support of them. By thus indicating the weight of authority it may influence future decisions and accomplish something in the direction of uniformity, but this is the only way, and it cannot be done in twenty volumes. In short, any one who talks of putting the whole body of the law into twenty volumes is either sublimely ignorant of the practical side of legal publication or is trying to mislead. There are now about 800,000 decisions in the American Reports, and with the Canadian and English and Insular cases, which must be included in a Corpus Juris, there are more than a million cases.

The average text-book gives from 5,000 to 10,000 cases in a volume. Prof. Wigmore takes five very large volumes to cover just one branch of the law, Judge John F. Dillon takes five volumes to cover another, and Judge Thompson takes seven volumes to cover another. Now it is possible but not probable that Mr. Andrews knows how to treat these subjects so that they will appeal to the Bench and Bar of the United States in a better way than the three gentlemen mentioned above. There is little unnecessary space taken up in the above-mentioned treatises, and how any American Corpus Juris could expect to treat these subjects in less space than is taken by the above-mentioned gentlemen it is hard to understand. Perhaps Mr. Andrews does not understand the meaning of Corpus Juris. It may be his intention to have twenty volumes filled with hornbook treatises; and, in fact, that is all that a twenty-volume work would admit of. But the word "hornbook" is the very antithesis of Corpus Juris.

The "promoters" darkly hint at throwing a great many of the decisions into a scrap heap as worthless and unimportant to the profession. Now, as the profession knows, the Lawyers' Co-operative Publishing Company has for years been engaged in picking out what it considers the best cases for the profession, and reprinting them in the Lawyers' Reports Annotated. The Bancroft-Whitney Company has been engaged in doing precisely the same thing in the American State Reports. Yet we know that by actual count the L. R. A. only duplicates cases to

the extent of 10 per cent. If this very competent, experienced editorial staff cannot agree on more than 10 per cent. of the instances as to which are the best cases for the profession, what must we expect from this modern Moses in the law publishing field who is certainly without the ability and experience of the editorial staffs above referred to? Think of any one making public announcement of his ability to sit in judgment on the million decisions that constitute the English and American common law, to select the cases which he considers are entitled to live and cast into utter darkness all the rest!

The "memorandum" states that this work, which is to be done by men "the ablest to be found in America," can, "according to calculations based on careful computation," be produced at a total cost, including the cost of advertising, of "approximately six hundred thousand dollars." Yet the sets of Encyclopedias already published, even under the much dreaded influences of commercialism, have each cost more than twice this amount.

The method of production contemplates the employment of a "board of editors not exceeding seven men," "an associate board of editors to consist of about twenty," and in addition to these "a strong editorial force under the immediate direction of the Board of Editors," "an Advisory Council of twenty or twenty-five of the strongest men in the profession," and also "a Board of Criticism of at least one hundred and perhaps two hundred selected from among the ablest lawyers on the bench and at the bar." Almost enough cooks, it would seem, entirely to spoil the broth.

The scheme has, however, been already condemned by two men, both well fitted to pass on the question, and who have given time and labor to its careful and thorough examination. Prof. John H. Wigmore, whom we would select without question as qualified to undertake the editorship of such a work, has already described it as untimely, unsound and futile. Untimely, because our law is passing through a period of radical changes, both in substance and in form. Unsound, because there are to-day fifty distinct independent states within this nation, varying at countless points and in infinite details. Futile because there are not yet in this country scholars equal to that which is set forth. And in the Illinois Law Review for October, 1910, the scheme is reviewed at great length by Mr. Joseph I. Kelly of the Illinois and Louisiana bars, who declares that the scheme of the triumvirate as set out in the "memorandum" will do more harm than good for the future of American law.

It is the opinion of the Review that there some day may be a call for an American Corpus Juris which will collect and arrange under a logical system of classification (the

alphabetical arrangement of title being favored by the American Bar and Bench) the enormous body of judicial decisions which our reports contain. But it will have to be done in one hundred and not in twenty volumes. And it will have to be begun and carried on, not by a trio of law professors employed in practice and teaching, but by an organized staff of jurists and professional writers that have been brought together and trained in work of this kind and have mastered the statements of legal principles—a body of men such as have for more than a decade been doing work in this direction in the American and English Encyclopedia of Law and the Encyclopedia of Law and Procedure.



On June 13, 1912, the first graduating class, consisting of twenty-one members, received their diplomas from the State University of Oklahoma Law School. On that same day ground was broken for the new \$125,000 law school building voted by the last legislature. Construction has progressed so rapidly that the entire core of the building, consisting of steel and reinforced concrete, is now erected. The building is to be three stories and a basement, of white Bedford stone, and of Collegiate Gothic architecture. It is 130 feet in length and 54 feet wide. It will have projecting entrances on the east and west and the tile roof will be surmounted by four corner stone towers.

On the first floor will be a wide terrazzo floor, well-lighted corridors, a large lecture room seating 120 students, a women's room, two coat rooms, a book locker room, a debating hall, the dean's office, and a stenographer's room. On the second floor will be a lecture room seating 180, another seating 70, a practice court room fully appointed as an ordinary court room, a room for the judge and clerk of the practice court, an extra office, and a faculty toilet. The general toilet, a janitor's room, an unpacking room, the fan room and the corridors will be in the basement, and will be the only parts of the basement to be finished at the present time. Later the remaining parts will be finished into locker rooms, students' room, law club rooms, etc. The basement rooms are high and well lighted. The crowning feature of the building will be the third floor, which will all be in one room, with two heights of ceiling. Fourteen feet out from either side will be a row of octagonal paneled oak pillars, 18 inches wide by 30 inches long, with dull pointed arches of oak connecting them with the walls and with each other. Here the ceiling will be 19 feet high, handsomely beamed, and hung with rich light fixtures. The 22-foot space in the middle of the room, between the two rows of columns, will have a 29-foot ceiling. This ceiling and its high side walls, and all of

the other walls in the room, will be handsomely and variously paneled in fumed oak. One-third of the room will be railed off for the book stacks, and into this space will open the professors' studies and librarian's room, with a students' consultation room next to the main reading room, which occupies the other two-thirds. These studies, etc., will rise only nine and one-half feet high, and will have flat tops or decks, which are to be used in the future for overflow book stacks. These are reached by small steel stairs. These studies are paneled up their entire height in oak, and look like screens standing in the main room. They do not break the architectural effect obtained by having the whole story in one room. Handsome heavy, rather flat, oak arches span the long central space between each pair of columns, and canvas panels will be left on the high sides of this space, to be filled later by paintings of college emblems and artistic cartoons. It is believed that this will be one of the handsomest, most commodious, and attractive law school libraries in the United States. Great pains have been taken to make the building embody the best features of the best other law school buildings. It has a beautiful site near the center of the sixty-acre campus, looking out upon numberless trees and the main oval on the west and the athletic field on the east. It is anticipated that the building will be complete in all respects before the close of the present school year.



The changes in the faculty of the University of Michigan Law School since last year are as follows: Professors V. R. McLucas and G. L. Clark have resigned; Mr. McLucas entering the practice of law at Los Angeles, and Mr. Clark going into business in Baltimore. The two new members of the faculty are as follows:

Mr. John B. Waite, a graduate of Yale College, and a graduate of the Department of Law of the University of Michigan in the class of 1907. Since graduation Mr. Waite has practiced successfully in Toledo, his home city. Mr. Waite has been a close student of the law, both before and since graduation, and has contributed to our Law Review. He will have the courses in Sales, Patent Law, and one other subject yet to be assigned.

Mr. Willard T. Barbour, who holds the degrees of A. B., A. M., and LL. B. from this University. Shortly after graduation, Mr. Barbour went to Oxford as a Rhodes scholar, where he has been four years. During the last two years Mr. Barbour has done special work in the history of assumpsit and in early equity jurisdiction under the direction of Professor Vinogradoff. Mr. Barbour will have the courses in Criminal Law and Procedure and one other subject, and will

assist in the editorial work of the Michigan Law Review.

New courses this year in Mining and Irrigation Law and in Patent Law have been introduced. In all three of these subjects we have heretofore given lecture courses only.



The Law Department of the newly established University of St. Ignatius, San Francisco, Cal., opened its doors for students on Monday, September 10th.

The Law College is housed in suitable quarters in the Grant Building, at Market and Seventh streets.

Instruction is given in the evening from 7:30 to 9:30 p. m., for the convenience of the students, as well as of the professors, who are recruited from the local bar.

The course will cover four academic years and leads to the degree of Bachelor of Laws. The curriculum offers a comprehensive program of instruction in all the branches of the law. The training given to the student will be thorough and systematic, and will have special reference to the laws of the state of California.

During this the opening year of the Law College of the University of St. Ignatius, the first and second years of the course will be taught.

The members of the faculty of the Law College of the University of St. Ignatius is drawn from the local bar, and includes some of San Francisco's most prominent lawyers. The following constitute the faculty: Dean, Matt I. Sullivan; Professors of Law—George A. Connolly, John O'Gara, John J. O'Toole, Joseph Farry, Joseph W. Beretta; Special Lecturers in Law—Hon. James V. Coffey, Hon. Jeremiah F. Sullivan, Hon. John M. Burnett, Theodore J. Roche, Eustace Cullinan, Thomas W. Hickey, Frank J. Sullivan, James A. Bacigalupi; John J. Coghlan, Registrar.



Dean H. S. Richards, of the University of Wisconsin Law School, has been granted a leave of absence for the academic year 1912-13, and will spend the time studying and traveling abroad. During his absence Professor E. A. Gilmore will be acting Dean.

Professor Eldon R. James, formerly of the University of Cincinnati Law School, has become a member of the faculty of the University of Wisconsin Law School. Professor James spent last year in the Harvard Law School, taking the graduate course there, and receiving the degree of S. J. D. He will offer courses in Comparative Law, with special reference to Roman and Continental Law, and in History and Theory of Law and Sociological Jurisprudence.

In place of the customary thesis requirements of graduates, all candidates for the de-

gree are required during their last year to attend seminar in either Private or Public Law. Professor E. G. Lorenzen, during the first semester, will conduct a seminar in Private Law; Professor Gilmore, during the second semester, will conduct a seminar in Public Law.

Professor H. L. Smith, who has been on a leave of absence during the year 1911-12, and who taught at the Leland Stanford, Jr., Law School, will resume his work in the University of Wisconsin during the coming academic year.

Professor O. S. Rundell, who has been teaching for the past two years in the University of Wisconsin resigns his professorship to engage in practice.

During the summer session of 1912 Professor W. W. Cook, of the University of Chicago, and Professor A. M. Kales, of the Northwestern University, offered courses in law at the University of Wisconsin.



H. W. Ballantine, who was acting Dean of the University of Montana Law School last year, has been appointed to the full deanship, and has also been given the title of "W. W. Dixon, Professor of Law," a chair created in honor of Judge Dixon, whose widow has made a substantial gift to our law library. Professor A. N. Whitlock has been promoted to a full professorship, and Charles M. Neff, a graduate of Columbia Law School, who has been practicing for the last six or seven years in Colorado, has been appointed as a third regular professor. Judge John B. Clayberg, who has removed from Montana to San Francisco for the practice of law, honorary Dean last year, will continue his connection with the law school as nonresident lecturer in Mining and Irrigation Law. Mr. C. L. F. Kellogg has been appointed lecturer on conveyancing and examination of titles to real estate. Mr. R. Justin Miller, assistant in law, will supervise the work in the practice court of the first and second year and give personal instruction in the preparation of cases for trial. Great attention is given to the practice court work at the Montana Law School, where it is put on the basis of a regular course throughout the entire three years of the Law School curriculum. This is the second year of the Law School's existence, but it is already one of the most promising departments in the University.



The Hamilton College of Law, of Chicago, Illinois, has announced, as a cardinal rule of government of the school, that its faculty be at all times an actual teaching force of lawyers, made up of men in the actual practice of their profession, lawyers who also know how to teach. The lawyer, who is also a

teacher, and who has a real interest in his professionship in the Law School, is called by this school the best type of instructor and director for the student body, as in this kind of instructor only is found the man who can best blend the theory of the law with the actual fact of practical application of legal principle to everyday affairs. The man who entertains a class only is oftentimes of little actual value to that class as a teacher, so the man who spends a large time of the class work in talking about himself and other monologue work, may add a few fellow worshippers at a common shrine; but he will add little to the instilling of the necessary fundamental principle, the time-honored law maxim, and the basic rules of law. Perhaps the time has arrived to give the old-fashioned law teacher a hearing as against the much-advertised lecturer from the Bench, whose importance as a law teacher is oftentimes vastly overestimated, and whose ability to deliver the needed fundamental work to his class is oftentimes injured by his personal importance and his inability to see things from the student's viewpoint, and, saddest of all, his lack of time to properly prepare the work of his course. A man, who has made himself great as a judge, dwarfs himself when he essays lecture work, when his talents do not lie in that way.

The following members of the Chicago Bar have this year been added to the faculty of the Hamilton College of Law: Hon. Warwick Shaw, who will lecture on "Wills"; Hon. Henry J. Fehrman, who will lecture on "Federal Practice"; and Mr. Robt. Huttner, who will lecture on the "Law of Abstracts."



The faculty of the College of Law of the University of North Dakota has undergone several changes in the past year. During the summer of 1911 Judge Guy C. H. Corliss and Mr. Skulason resigned; their places being filled by the appointment of Roger W. Cooley as Professor of Law. In November, 1911, Andrew A. Bruce, the Dean of the school, resigned to take the appointment of Associate Justice of the Supreme Court of North Dakota. In May, 1912, this vacancy was filled by the appointment of Dr. Robert L. Henry, Jr., as Professor of Law and Dean of the school. Dr. Henry is a graduate of the University of Chicago, receiving the degree of B. Ph., and subsequently, on the completion of his law course, the degree of Doctor of Jurisprudence. He then went to Oxford University, where he received the degree of Bachelor of Civil Law. After graduation he taught at the University of Louisiana, and later at the University of Illinois. In July, 1912, Professor L. E. Birdzell, who has been a member of the faculty for seven years, was appointed Chairman of the State Tax Commission. As the duties of this position made

it impossible for him to give any time to the Law School, he was granted a leave of absence for two years. This vacancy has been filled by the appointment of Joseph L. Lewinsohn as Assistant Professor of Law. Mr. Lewinsohn is also a graduate of the University of Chicago, having received his B. A. in 1905 and J. D. in 1907. Since graduation he has been engaged in practice, and will take charge of the practice work in the Law School. The fourth member of the faculty is Assistant Professor Charles E. Carpenter, who has been with the school for the past three years.



The opening lecture for the fall term, 1912, was delivered in the Atlanta Law School at 4 p. m. of October 3, 1912, by Hon. Luther Z. Rosser on the subject, "The Study of Law."

Changes in faculty: The regular lectures and quiz work on "Real Property" this year will be conducted by Hon. Wharton O. Wilson, LL. B., University of Virginia, who has spent many years specializing in all the branches of Real Estate Law. His work will be supplemented by a course of ten lectures by Hon. Charles D. McKinney, A. B., B. Litt., LL. B., formerly Professor of Realty.

In addition to the regular faculty and to the regular lecturers, the Law School announces four practitioners as instructors, who specialize on the subjects committed to them: Mr. Hamilton Douglas, Jr., B. S., Vanderbilt University, and LL. B., Atlanta Law School, who will teach in the school of practice, "Where to Find the Law," and "Appellate Procedure"; Mr. Harrison Jones, A. B., University of Georgia, LL. B., University of Michigan, who will handle the subjects, "Domestic Relations" and "Bailments and Carriers"; Mr. Phillips C. McDuffie, LL. M., George Washington University, who specializes on "Insurance" and "Agency"; and Mr. Alexander W. Smith, Jr., A. B., University of Georgia, A. B. and LL. B., Yale University, who will teach the subjects, "Partnership" and "Sales."



Very material changes have been made in the course of study in the Marquette University Law School, Milwaukee, Wis. The evening course has been completely revised and extended to four years, with eight hours of recitation per week. In the day school a four-year course has also been introduced; the three-year course also being continued. The school has been made a member of the Association of American Law Schools by unanimous vote during the meeting of that body in this city in August. A number of additions have been made to the faculty of the school, including Hon. A. C. Backus, Judge of the Municipal Court of Milwaukee County, who will teach the subject of Criminal Law, Hon. Ferdinand Geiger, United

States District Judge, who is to teach Code Pleading, while Mr. Lester Manson, formerly Assistant City Attorney, teaches Municipal Corporations. Considerable progress has been made in the work in practice and procedure, and a large number of moot court cases to be conducted by the judges of the Milwaukee County Bench are in preparation. Mr. E. W. Spencer has found it necessary to resign from the Associate Deanship of the school, because of the call upon his time due to his literary work. He is just completing his text-book on Suretyship and revising some of his earlier publications. He will, however, continue to teach the courses which he has heretofore conducted in the school.



The Albany Law School, which changed the course last year from two to three years, has an entrance class of substantially the same number as last year. The change in the curriculum has met with great favor from the Alumni of the school and the student body, enabling the school, as it does, to devote more time and attention to the theory of the law than was possible during the two-year course. The school had a course of one year leading to graduation and the degree of LL. B. from the date of its founding in 1851 to 1898. From the latter date to 1911 the course was two years; the change to three years having taken effect at the opening of the school in September of the latter year.

The school has sustained a serious loss in the recent death of the Registrar, Mr. John J. Hughes, who had occupied that position for a number of years, and whose popularity and activity contributed much to its welfare. He is succeeded by Mr. John C. Watson, who took the degree of LL. B. in 1910 and LL. M. in 1911. His appointment has met with the hearty approval of the students and Alumni.



J. S. Partridge, of the San Francisco Bar, who for several years has been Lecturer in California Practice in the Stanford University Law School, has been forced by the press of other duties to resign his position. As his successor, the Board of Trustees have appointed S. W. Charles, of the Santa Clara County Bar. Mr. Charles, who is a Stanford graduate, conducted the course with great success during the second semester of last year.

The national law school honor society, known as "The Order of the Coif," has installed a chapter at Stanford University. The charter members of the chapter, elected from the graduating class of 1912, are Messrs. A. F. Coe, W. H. Patterson, R. M. Perkins, and C. C. Shoemaker.

The San Francisco Alumni of the Stanford University Law School have recently

presented to the University three scholarships of one hundred dollars each, to be awarded to graduate students in the Law School.

Last spring the Trustees of Stanford University added a seventh man to the regular teaching staff of the Law School. The new appointee is Assistant Professor Marion R. Kirkwood. Mr. Kirkwood holds the degrees of A. B. and J. D. from Stanford University, having obtained one year of his Law School training at Harvard. Last year he was a member of the law faculty of the University of Oklahoma. During the present year he will give the courses usually taught by Professor Huston, who is absent on sabbatic leave.



The law faculty for the current academic year in the University of Notre Dame remains substantially unchanged.

Prof. William Hoynes, the Dean, has found it necessary to bestow a considerable share of his attention and time on the legal business of the University, in addition to his work in the postgraduate course and the collection of data for a law book that he intends to write.

Hon. Timothy E. Howard, former Judge of the Supreme Court, has been nominated on the Democratic ticket for Circuit Judge of St. Joseph County. He is so well known that it would seem almost superfluous for him to take an active part in campaigning. Aside from this, he is not disposed to compromise the judicial dignity by resorting to the ordinary methods of politicians; hence he is lecturing daily to his classes and fulfilling as scrupulously the duties devolving upon him as though he were not personally interested in the pending election.

Judge Gallitzin Farabough, of the Municipal Court, a former graduate of the Law Department, has resumed his work, and lectures daily to the students of his class in the Junior year. His court adjourns about noon, and afterward he takes up his work at Notre Dame.



The American Central Law School, of Indianapolis, has elected as president Cassius C. Hadley, formerly Chief Justice of the Indiana Appellate Court. W. W. Thornton, who has been President since its organization, becomes Chancellor. T. J. Moll continues as Dean. The following have been added to the faculty: James M. Ogden, Thomas A. Dailey, Willits A. Bastian, and William P. Evans, all of the Indianapolis Bar. Ex-Probate Judge Merle Walker will lecture on Wills and Administration. The school now has commodious quarters in the new Lemcke Annex. The entrance requirements have been materially raised, and the school year has been increased from 35 to 40 weeks.

The graduating class last spring was the largest in its history. Governor Thomas R. Marshall, vice presidential nominee, delivered the address. The enrollment this year is better than at the opening last fall.



T. W. Hughes, recently Professor of Law in the University of Louisiana, has been appointed to the Deanship in the University of Florida Law School, where he succeeds A. J. Farrah, who has gone to the University of Alabama.

The enrollment in the University of Florida will show a material increase this season over the attendance of last year. A new Law School building is practically assured, and everything in connection with the school bears a prosperous appearance.

Mr. Hughes, the new Dean, has had considerable experience as a teacher of law. He was a member of the faculty of the University of Michigan for six years. He taught in the University of Illinois for twelve years, and in the Louisiana State University two years. The state of Florida has spent during the past seven years over \$600,000 in buildings and equipment for the University, and there is every prospect that it will continue its generosity in this direction for some years to come.



A new Law School has been established in San Diego, California, by R. R. Hamilton and Fred E. Lindley, both of whom are instructors in the school. The prospectus of the institution states:

"This Law School is organized to prepare those who want to practice law, to assist those who want to improve themselves, who want to fit themselves for better positions, who want to get into larger things, and cannot afford to give up position and salary to attend a resident college. By judicious use of time under proper direction, these results can be accomplished without sacrificing position or income.

"Classes meet on Tuesday and Friday evenings, at 7:30, in lecture room of San Diego Commercial College, third floor Sefton Block. Two lessons each meeting. Law School methods of instruction are employed; text-book, case-book, and lecture methods being so combined as to get the best possible results."

Both Mr. Hamilton and Mr. Lindley received their education in the University of Chicago.



Ralph W. Gifford has retired as Pro-Dean of the Fordham University Law School, New York, and accepted the Chair of Testamentary Law at the Yale University Law School. Mr. Gifford will continue to lecture at Fordham this year on the subject of Evidence.

M. F. Dee has been appointed as Pro-Dean to succeed Mr. Gifford.

Wm. A. Keener, in addition to his course in Contracts in Fordham, will give a full two hours' course in the third year in Trusts.

A. M. Wilkinson will have Equity and Domestic Relations in Fordham, succeeding Alexander R. Gulic in the former study.

John T. Loughran will lecture on Carriers, Sales, and Contracts in the evening session.



The School of Law of the University of Alabama began its fortieth session September 5, 1912, with a registration of 125 students, an increase of 45 over the total registration of last year. This increased attendance, which is shown in all departments of the University, is due, in no small part, to the new life and energy injected into the University by its new president, Dr. George H. Denny.

The faculty of the Law School has been strengthened this year by the addition of Professor Albert J. Farrah, who was called from the Deanship of the College of Law of the University of Florida to become Assistant Dean of the School of Law of the University of Alabama. The other members of the faculty are Dean W. B. Oliver, Prof. Thomas B. Ward, Hon. Henry Upson Sims, Hon. Edward W. Faith, and Hon. Charles B. Verner.

The entrance requirements for candidates for a degree are a high school course of four years.

The curriculum, which covers a period of two years, of nine months each, has been rearranged and greatly strengthened this year. It is the purpose of the school to extend the course of study to three years in the near future, at which time the work in the local law will be made optional with nonresident students.

Under the able direction of Dean Oliver, the Law School of Alabama has grown in numbers and increased in efficiency, and it begins the year under the brightest prospects.



At the Stetson College of Law, De Land, Fla., Paul H. Dodge, Ph. B., J. D., will succeed Mr. D. O. Hull as Junior Professor of Law. Mr. Dodge secured his J. D. from the University of Chicago. Later he spent a year at Oxford University, where he made a special study of law. He comes highly recommended by eminent law professors and by prominent lawyers.

The Alumni of the Stetson College of Law are taking high rank in the legal profession in Florida. Hon. Emmett Wilson, of Pensacola, has been elected to Congress. Several others have been elected to the State Legislature. All of them are succeeding in their legal practice.

During the past year large additions have been made to the Law Library. This is now one of the largest and best selected law libraries to be found in any Law School.

The Detroit College of Law is now entering on its twenty-third year. The day school section, which was started two years ago, now has three complete classes; the sessions being held at four o'clock in the afternoon. John C. Bills, who has been instructor in Torts and Common Carriers, will this year also take the subject of Constitutional Law in the third-year classes.

The course in Contracts under Elisha A. Fraser, who has taught the subject since the inception of the school, has been lengthened to include the entire Freshman year. Dean Van Zile, who recently took up the office of Circuit Judge, will not conduct the Practice Court this year. His added duties on the Bench, together with the addition of the day classes, has compelled him to give up this part of the curriculum. Professor Fred H. Aldrich, who teaches the subject of Common-Law Pleading and Municipal Corporations, will have charge of the Practice Court in the future.

The enrollment in both the day and evening schools has been large, and the year bids fair to be a successful one.



The enrollment at the College of Law of the University of Southern California, Los Angeles, again breaks its past records with an increase of approximately one hundred over last year's enrollment. Dean Frank M. Porter expects a total enrollment exceeding 550 for the year.

There have been some changes in the faculty and curriculum. Prof. V. R. McLucas, formerly an instructor in the Law Department of Michigan University, will teach Common-Law Pleading. This subject was taught for several years by the late Judge H. C. Dillon. Mr. W. S. Allen will conduct a course in Conveyancing, and the subject of Conflict of Laws has been transferred from the Graduate Department to the undergraduate course, Senior year. E. W. Tuttle conducts this course.

Owing to the large enrollment of women, a Woman's Department has been introduced this year, with women attorneys as teachers. Separate classes have been organized in three subjects, Criminal Law, Domestic Relations, and Torts. This department seems to be quite a success, over thirty women having already enrolled for these classes.

Because of the increase in enrollment it became necessary to rent more room to accommodate the students. The College of Law now occupies all of the fourth floor and most of the fifth of the Tajo Building, corner of First and Broadway, Los Angeles.



Mr. Walter Samuel Lockhart has been elected Associate Professor of Law at Trinity College, Durham, North Carolina, to fill

the vacancy caused by the resignation of Hon. J. Crawford Biggs, who resigned to enter into the practice of law at Raleigh, N. C. Mr. Lockhart is an A. B. of Trinity College. After graduation, he taught with considerable success in the Trinity Park School for several years, and then read law for two years in the Trinity College Law School, in which he took a very high stand. After his two years' work in the Trinity Law School, Mr. Lockhart spent a year at the Harvard Law School, where he successfully passed the third-year work required by that eminent institution. Mr. Lockhart is a born instructor, and comes to the Trinity College Law School thoroughly equipped for his work.



The John Marshall Law School began its thirteenth year of work September 16th with the largest enrollment in its history, despite the fact that this year the school has insisted that all applicants should have the required amount of preliminary training before taking up the study of the law.

A pre-legal class of more than thirty members has been organized from applicants who had not fulfilled the high school requirement.

The school has introduced an innovation this year in Law School study, by providing a regular course in the subject of Ethics, with special reference to the origin and development of legal ideas, and their relation to, and differentiation from, purely moral and political ideas. The course is being given by Mr. Albert Kocourek, whose work in the field of Jurisprudence is well known to all Law School men.

Special courses are being given free to students outside of the regular class hours, in Law Latin, Public Speaking, and Parliamentary Law.



Eldon R. James, who has been connected with the Cincinnati Law School for the past twelve or fifteen years, has accepted a professorship in the Wisconsin University School of Law. Prof. Robert C. Pugh was recently appointed to the Bench in Cincinnati, and will give up most of his work in the Cincinnati Law School. He will, however, continue to teach the subjects of Trusts and Mortgages.

To fill the places of these two men, the faculty has selected Mr. Frank Coppock, of the Cincinnati Bar, who will teach Criminal Law, and Mr. Nathan Isaacs, who will devote all of his time to teaching in the school. Mr. Isaacs graduated from the Cincinnati Law School and is regarded as one of the most scholarly young men in the city.



The Law School of the University of Kansas has taken its place among the American

schools that require for entrance some work in college. Beginning with September, 1912, all students applying for admission are required to be graduates of a four-year high-school course, and also to have at least one year's credits in a reputable college.



Warren A. Seavey, a graduate of Harvard and a cum laude graduate of Harvard Law School, has been elected Professor of Law in the University of Oklahoma, to take the place of Professor Kirkwood, resigned. Professor Seavey has taught American Law from American casebooks at the Imperial University at Tientsin, China, and more recently has conducted the course in Pleading at the Harvard Law School. He is also the compiler of a collection of cases on Agency, and has practiced law in Boston two years.



Mrs. Ellen Spencer Mussey, Dean of the Washington College of Law, is strongly indorsed as a candidate for the position of Judge of the Juvenile Court of the District of Columbia. Mrs. Mussey has just retired from the Board of Education of the District after serving six years, of which time she was for three years the Vice President.

Mr. Charles G. Fenwick, of the Carnegie Peace Endowment Foundation, is to deliver a course of lectures on International Law; and Miss Marion Cottle, daughter of the late Judge Cottle, of Buffalo, and herself a successful practitioner in New York City, is to give an extended course of lectures on Domestic Relations.

The faculty have in view introducing the system of advisors for students in the first year, assigning a graduate student to groups of new students who require special attention.



The class entering this fall at the Law School of Western Reserve University, Cleveland, Ohio, is the second since that school was placed upon a graduate basis. The class is considerably larger than that of last year, and nearly as large as were the classes when men were admitted directly from high school. All of the members of the Law School faculty are pleased with the kind of work which can be done when all students have received their college training before admission to Law School, and the increased attendance indicates that college men appreciate graduate work. The faculty at Reserve remains the same as that of last year.



The Creighton College of Law, Omaha, Neb., recently purchased the furniture, fix-

tures, and fittings of the eight courtrooms maintained by Douglas County, and has moved the equipment into the Law School building. One of the benches, that used in courtroom No. 1, is of solid cherry, and, apart from the fact that it could probably not be duplicated now for less than \$15,000, it has a peculiar interest because of its long service in the old courthouse. The school is fitting up two courtrooms; one seating 300 people, and the other 50. A very complete set of Moot Courts is maintained at Creighton, and the practical phase of a lawyer's training is emphasized.

The last of the \$15,000 worth of books bought recently by the school, by way of addition to its already good library, have been received, and the institution now has one of the best working law libraries in the country.



Wm. P. Willey has resigned as a member of the faculty of the College of Law of the University of West Virginia. Geo. F. Wells, of the St. Johns College of Law, Toledo, Ohio, has been selected as his successor. For many years Mr. Willey has been regarded as one of the most capable and best known Law School teachers in the South, and his retirement from active University work will be regretted generally throughout the state of West Virginia.

The entrance requirements for the College of Law of the University of West Virginia have been raised from the standard of a high school education to one year of college work, and the full three-year course is now required of all students.



Since the last issue of the Review, Robt. W. Withers, late of the Bedford City (Va.) Bar, has been elected Professor of Law at the Washington and Lee University. Mr. Withers graduated from Washington and Lee in 1905, and since that time has been actively engaged in the practice of law at Bedford City. In the short time that Mr. Withers has been at the Bar, he has made an excellent reputation for himself, and is widely known throughout the state of Virginia.

Martin P. Burks, Dean of the Washington and Lee University Law School, has been busily engaged for some time in preparing a work on Common-Law Pleading and Practice, which is scheduled to be published about the first of next year.



The University of Oregon Law School, Portland, Or., has an entering class this year numbering over 100 students. Judge Gantenbein, Dean of the Law School, replaces Walter H. Evans as professor on the

subject of Contracts. Mr. Evans will continue to teach the subject of Bills and Notes. Public Speaking will be actively taken up by the students this year, and a new society for that purpose has been organized by T. Walter Gillard, the Secretary of the school. This society will be later closely allied with the student body, when preparatory work to select the debating teams to represent the school against the other law schools on the Coast takes place.

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In the Summer Quarter of the University of Chicago Law School, in addition to the work given by regular members of the faculty, Professor Roscoe Pound, of Harvard University, gave Bills and Notes; Professor Albert M. Kales, of Northwestern University, gave Future Interests; and Professor Chester G. Vernier, of the University of Illinois, gave Bills and Notes.

One hundred and twenty-three colleges, 80 other law schools, and 39 states and countries were represented among the students in attendance at the University of Chicago Law School last year.

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The University of Detroit has added a Law School to its other departments. It is felt that only a Law School of the highest standard and efficiency will satisfy the patrons and alumni of the University. No efforts will be spared, therefore, to make the new undertaking come up to the high ideals set for legal training. Those on the faculty list are: William F. Dooley, S. J., President; Judge George S. Hosmer, Dean; Standish Backus; Fred A. Baker; Leo M. Butzel; George L. Canfield; Willis J. Clark; Judge William F. Connolly; John H. Goff; William J. Gray; Judge P. J. Hally; Judge H. S. Hulbert; James T. Keena; George F. Monaghan; Judge Alfred J. Murphy; Ernest A. O'Brien; Bernard B. Selling; Judge Henry H. Swan; William Van Dyke; E. Gay Wasey; Thomas A. E. Weadock; William P. Winch.

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After an extended absence abroad, Dean Homer Albers, of Boston University Law School, assumed his new duties as Dean on September 1st. Dean Albers plans no changes on the faculty during the first year of his administration, and intends to follow out the present policy of the school in obtaining active lawyers as members of the faculty. Dean Albers will lecture upon Contracts and Civil Procedure during the present year.

Dr. Melville M. Bigelow, who resigned as Dean a year ago, is still connected with the Boston University Law School as professor in charge of the Master's work of the School.

The courses of instruction in the Chicago Law School have been enlarged by adding Railroad Law and Interstate Commerce Law; also three distinct courses in practice, an elementary course of practice for Freshman, study of leading cases and the Work of the Advocate for Juniors, and all the points on procedure for general practice for the Seniors.

Carelton H. Pendleton, A. B., LL. B.; Roscoe E. Little, B. S., LL. B.; Howard F. Bishop, A. B., LL. B., assistant corporation counsel of this city, and four years instructor at Yale; Frank L. Wood, A. B., LL. B., editor of the Chicago Daily Law Bulletin; and A. W. Brickwood, A. B., LL. D., author of "Brickwood's Sackett's Instructions," head professor of Practice—have been added to the faculty for the coming year.

♦ ♦ ♦

The vacancy in the faculty of the Louisiana State University Law School, caused by the resignation of Professor T. W. Hughes, has been filled by the election of Professor Ira S. Flory, late Instructor in the University of Virginia Law School.

Professor Flory is an A. B. of Mt. Morris College, Illinois, and an LL. B. of the University of Virginia Law School. He comes to his new duties with high recommendations from the faculties of both institutions.

♦ ♦ ♦

Robert L. Henry, Jr., who has left the faculty of the University of Illinois Law School to accept the deanship of the College of Law of the University of North Dakota, has been succeeded by William G. Hale. Mr. Hale had already taught two years at Illinois—in 1909-10 and 1910-11. During the year 1911-12 he was engaged in practice at Portland, Or.

During the summer the Law Building has been considerably improved and new conveniences added—to the extent of \$15,000.

The library has been increased much more than usual. Two thousand volumes were added last year, and we have an appropriation large enough to add 2,000 more volumes this year.

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The College of Law of the State University of Kentucky, Lexington, Ky., has opened the present session with an increase of forty per cent. in student attendance over that of the past year. The faculty now consists of seven members, and each is admirably fitted for his work. One thousand volumes of standard law books have been added to the library during the past year, and arrangements are now being made to add two thousand more volumes during the early part of the present year, so that the library equipment will consist of more than five thou-

sand volumes. At the meeting of the Association of American Law Schools, held in Milwaukee in August last, this Law College was admitted to membership in that Association.



The George Washington University Law School offers two new courses this season: One by Everett Fraser in Constitutional Law. This subject has been heretofore taught in the College of Political Science, but the course is now authorized in the Department of Law. Also a course in the law of Municipal Corporations by H. C. Jones.

The course for the degree of Master of Patent Law will hereafter be strictly a graduate course, requiring a full year of work after the taking of the degree of LL. B.



The competition for the cash prize of one hundred dollars offered by O. K. Cushing, of the San Francisco Bar, for the best essay on the subject "A Comparative Study of the California and English Systems of Statutory Pleading," was won by Mr. George J. Hatfield, of the Stanford University Law School. The competition was open to second and third year students of the Stanford Law School and the University of California Department of Jurisprudence. Mr. Hatfield's essay will probably be printed, and ought to be of value to lawyers who are interested in the improvement of our system of pleading.



William R. Vance, appointed Dean of the University of Minnesota Law School last year, assumed his duties early in September. Mr. Vance is well known throughout the law school world, having previously been connected with the teaching forces of the Yale University Law School, the George Washington University Law School, and Washington and Lee University Law School.



The practice work in the University of Idaho Law School, which was found to be most successful last year, has been enlarged from a course covering three-fourths of the school year to a whole-year course; the plan being to have the students "get into court, stay there, and complete all steps necessary to the successful termination of a suit originally started."



The Illinois College of Law, Law Department, De Paul University, Chicago, Ill., re-opened Wednesday, September 11th, with an enrollment the largest in the history of the College. The opening exercises of both Day

and Evening Divisions were held at the University Building. Very Reverend Francis X. McCabe, President of the University, addressed the students regarding the work of the coming year. The Day Division of the Law College, as heretofore, will hold its classes at the University. But, after October 15th the classes of the Evening Division will be held in the Chicago Business College Building, now in the process of erection at the corner of Wabash avenue and Adams street.



Chas. H. Burdick has resigned from the faculty of the Law School of Tulane University, New Orleans, and has accepted a professorship in the University of Missouri Law School. Mr. Burdick is the son of Professor Francis M. Burdick, who for many years has been connected with Columbia University.



Floyd R. Mechem, Professor of Law, University of Chicago, was the recipient of an honorary degree bestowed by the University of Michigan recently upon the seventy-fifth anniversary of its founding. Mr. Mechem is a teacher of great originality and power, and a productive legal scholar, whose published books have received general and merited recognition.



George F. Wells has severed his connection with the Law Department of St. John's University in Toledo, and has accepted a professorship in law in the University of West Virginia. He will teach this year the subjects of Equity and Damages.



A bill appropriating \$50,000 for a new Law School building at the University of Georgia will be presented at the next session of the Georgia State Legislature, and the indications are that it will be passed.



The Southern College of Law, a new institution, has lately been incorporated under the laws of Texas. This school is located at Houston, Texas, and is under the management of Frank E. Anderson.



G. H. Robinson, of the New York Bar, has been appointed Assistant Professor of Law at Tulane University to succeed Professor Burdick. Mr. Robinson is a graduate of Harvard College and of the Harvard Law School, and has for the last three years been engaged in practice in New York City.

A new law school has been organized in Tacoma, Wash., under the name of the Puget Sound University of Law. The school is under the management of Guy E. Keller, a well-known practitioner in Tacoma.

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Charles Henry Huberich, of the law faculty of Stanford University, has resigned his chair and will practice law in Berlin, Germany.

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Mr. A. C. Pulling, former Assistant Librarian in the Harvard Law School, has been appointed Librarian of the University of Minnesota Law School, succeeding Homer W. Stevens, resigned.

◆ ◆ ◆

The following argument in favor of the "Evening Law School" was sent to us for publication in the Review by Harry A. Beimes, a member of last year's senior class in the Benton College of Law, St. Louis, Mo.:

"Legal institutions are of very ancient origin; just when they first came into existence is probably not known, and need not, here, concern us. But evening law schools, as orderly and systematically conducted institutions of learning, are comparatively recent. They are, like every other monument that man has seen fit to establish, growths, being necessary stepping-stones for man in his desire and ambition to rise higher and reach out for greater achievements. The purpose and scope of the evening school is, like that of the day law school, to teach the fundamental principles of the law and to provide the student with such knowledge as may aid him in practicing that most honorable of all professions. But its organization and operation must needs be compact; that is to say, its efficiency must be concentrated on the student, and there can be no wasted energy. Herein lies the secret of its success, and herein lies its strength.

"The students are heartily in accord with this concentration of energy, because they are there for a purpose. It is the man with a purpose for whom the way must be cleared. It is the man with a purpose, whose path leads not to failure, but terminates on the pinnacle of success, even before he realizes that he has been cleaning Augean Stables all along the road. His labors are a pleasure to him and his capacity is unlimited.

"Now let us see what the evening law student must accomplish and how he must do it. There are twenty-odd branches of the law and two fundamental methods of teaching them. There is the case method and the text-book method; each has its virtues and each has its shortcomings. The case method, to the exclusion of all others, cannot be used to advantage in the evening school, because the students have not the time to devote to it that it demands. It is very laborious and time-consuming, and requires the wasting of energy, which the student and school alike will not tolerate. Let me illustrate: In the case method the student is compelled to wade through a sea of facts, select those necessary

to sustain the principles of law resting thereon, and deduce the reasons for such application. And, not infrequently, it happens that the student's tired brain will gather an erroneous conception after all this effort.

"You might say that, since the principles of the law are buried in the facts of the case, this method has its advantages in forcing the student to read the cases, and not rely on the lectures to enlighten him. To this argument there is but one answer. The evening law student is not there because his father sent him; he is there of his own volition. He has a purpose, and needs not to be driven. He is in business, as a rule, and has tasted of the trials and hardships of the outside world. He has learned to appreciate those golden opportunities of learning, and, after working all day, it is a joy and a recreation for him to go home and burn the midnight oil over his secondhand volume of 'Blackstone.' Indeed, the evening law student is that ambitious young man, who has been denied a college education, and needs no external force to drive him to study. His own inherent desire, that great and worthy ambition to rise to a higher plane, intellectually and perhaps socially, is a spur that never fails to make itself felt.

"Now, let us see the method that can be of the most value to this kind of student. Owing to the fact that the evening school can devote but a comparatively short time to lectures (three evenings a week), since the student must have some time to study, it must adopt the shorter and better method—the text-book system. It is a better method, because, as was intimated above, the students made it so.

"The text-book method sets down the principles, clear and concise, the reasons for the existence of such principles, and the circumstances that must exist before those principles can apply. This cannot be said of the case method.

"It is not here intended to convey the impression that the evening school abhors the case method; on the contrary, it makes the best possible use of it in this respect.

"The faculty of the evening school is composed of men, learned in the profession, whose business is, not to teach law, but to practice it. They are lawyers in fact as well as in name, and take as lively an interest in the work as the students themselves. They explain the text, where some intricate or complex principle is involved, and illustrate the application of these principles by cases which they themselves have encountered in the course of their practice at the bar. Thus it will be seen that the student learns the principles of the law from the text, and the faculty explain and illustrate these principles, already in the mind of the student.

"No mention has yet been made of the students' relations with one another. This incident of the evening law school is of inestimable value. The students are all business men, representing, at times, as many different walks of life as there are members in the class. In the gatherings before the classes convene each student has a topic of conversation to engage in that is entirely foreign to a great many of the others. This fact alone is bound to broaden their minds, give them a more comprehensive idea of the nature of things, and acquaint one with the business of the other, and vice versa.

"It, therefore, is apparent that, aside from merely making lawyers, the law school, evening and day alike, is one of the most effective institutions for developing the intellect, and, above all, the evening law school stands in the fore as having all the requisites that go to make men broad, efficient, and useful citizens."

**No charge is made to students in law schools for
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The American Law School Review

An Intercollegiate Law Journal

A. F. MASON, Editor

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No. 5

Methods by Which a Lawyer may Advertise*

By GEORGE H. MURDOCH

Of the New York and New Jersey Bars

In General

We think there is no question but that every lawyer will concede the correctness of the principle of the Canon on Advertising to the extent that it forbids any sort of solicitation. All that honesty and good taste will permit is for the lawyer who desires recognition to place himself before the public in the most favorable light. To do this successfully he must have ever in mind the dignity of his profession and maintain a due regard for intelligent public opinion.

Advertising in Newspapers

The most common method of advertising, with which all lawyers outside the large cities are familiar, is the insertion

of a card in the local newspapers. This must be of the simplest nature possible, and confined to your name, profession, and office address. Good taste would forbid even the addition of your telephone number, as this is a suggestion that emergency business is desired. This is a fine distinction, as in the case of a physician it would be perfectly proper. But physicians must respond to emergency calls.

The value of this method of advertising for lawyers is questionable, and we think it is wise only in lieu of something better. In large cities and medium-sized towns, where a lawyer can only be known personally to a small percentage of the people, such advertising might do some good; but it is in just these places where lawyers do not use this method, and where the lawyer who does is placed under suspicion. In small places, where the custom is followed, the direct results must be very nearly nil. There the

*This article is taken from "Building a Law Business," published by the Murdoch Law Book Company, Newark, N. J. The plans suggested for advertising and conducting a law office in proper ways are fully set forth and explained in Mr. Murdoch's invaluable little book.

lawyer is known more or less intimately by every one in the community, and they are little influenced by it, if at all. In selecting an attorney, they will be guided almost entirely by other influences. Transients seldom see the published card, and before calling on a lawyer they will consult the local bank, the hotel proprietor, or some other reference. Foreign clients, as a rule, never see the local paper, and so it cannot be counted on to affect them.

There may be exceptions to all of these conclusions, and newspaper advertising may bring indirect results which will warrant the expense. This must be determined by each individual lawyer for himself. Among the indirect results which the running of such a card may influence is the friendship of the newspaper itself. The editor is usually a good man to cultivate. He has troubles of his own, and it is natural that he should take more interest in favoring the man who patronizes him than the man who does not. Oftentimes the same result can be obtained through patronizing him in other ways, with your job printing, and such legal advertising and other work as you control, and the expense of running the card can be saved.

A favorable account of your successes in court in the news column of the paper, any favorable mention of your name, counts for far more than does the running of a regular card. But these are favors which you cannot hire, and which the self-respecting newspaper regards very jealously. The man who runs around to the newspaper office with every possible item calculated to bring his name into print soon finds that he has his trouble for his pains. There is something, too, about all these self-secured "puffs" which we will leave for the psychologist to explain; but it is a

fact that the public readily discerns how their insertion has been brought about.

Do this. Make it a point to interest yourself in public matters. Keep posted on local matters of even trivial importance. It is a faculty which can be cultivated to advantage for more reasons than one, and one in which lawyers as a class are deplorably lacking. Endeavor, whenever you see the editor, or the reporter calls upon you, to be able to tip him off to some little story of local news interest, especially one that does not concern yourself. You will soon find that, instead of having to run after these industrious gentlemen, they will be running after you, and, when the time comes that your name can be profitably used in a story, they will make the most of it, and without the suggestion of a hint from yourself. Newspaper men are a grateful lot, and it is far better to have them under obligations to you than to be under obligations to them. A lawyer should limit his obligations to as small a number as possible.

Stationery

As a lawyer should be circumspect in his conduct, he should be equally careful about everything from which others may form an opinion as to his character. The matter of office stationery is of prime importance. The prudent man will give it even a greater degree of study than he does his clothes. Those who see the clothes he wears have also other means of judging him. Many who see his stationery judge him by that alone.

In selecting and designing office stationery, do it with the idea of never changing it again so long as you may practice. No surface indication is calculated to give a stranger more confidence in a lawyer than the fact that his stationery remains the same year after

year. It speaks for a man of settled ways, a sober, careful man, who, having settled a matter once to his satisfaction, never has occasion to make a change—a safe character for an attorney, which every client appreciates. Aside from other reasons for maintaining a permanency in your style of stationery, one especially appeals to us. Having once designed, settled, and established the style, you need never give it further thought. When your stock runs low, simply give an order to have it duplicated.

As to stock for your letter head, select a good twenty-pound linen or bond, without "laid" or other fancy effects. The more severely plain it is the better. As to color, white or cream is far the best, though blue and azure are popular with lawyers, and a light brown, or fawn, or canary tint may be used. We would not consider other colors or tints. Have your printer supply you with a sufficient quantity of second sheets of the same paper, as a printed heading on each page of a letter is uncalled for and creates an unpleasant impression. The size should be $8\frac{1}{2}$ by 11 inches. If you prefer, you may use memorandum heads, half or two-thirds this size, for short letters, but we do not think they look nearly so well, and the saving amounts to practically nothing. The paper in 500 letter heads, full size, of 20-pound stock, costs from 45 cents to \$1. So you see that you save by using the smaller sheet only from $22\frac{1}{2}$ cents to 50 cents on a 500 lot. Use the full-sized sheet, and in the case of a short letter, instead of allowing your stenographer to bunch the letter on the upper half of the page, have her drop it down, so as to give a nice impression of balance.

The envelopes, both $6\frac{3}{4}$ and 10 (official size), should be of the same quality stock as the letter heads.

The printing should be severely plain,

using the same style of type on both. The type should be small, ordinarily not larger than 12-point (pica) for the largest line, and this is too large for the envelope. The card on the letter head should be in the center or in the corner, never clear across, unless in the case of a long firm name.

The wording should be limited to your name, profession, office, and city address. It is not bad taste to have it include your telephone number, as this may be a matter of convenience, and it is to be supposed that your relation to your correspondent is nearer than it is to the general public, whom you reach by a newspaper card.

It is not necessary that your profession should be stated on your envelope. For business reasons, the lawyer being frequently engaged in a strictly confidential capacity, many lawyers leave their names off their envelopes, substituting for it their postoffice box number.

If a firm, it is a good idea to have the individual names of all partners appear in the letter head; and if your office is organized into departments, it should bear the name of the department from which it emanates.

Business Cards

As a matter of convenience, as well as publicity, a lawyer should always be supplied with business cards. These should be printed or engraved, carrying out the general style adopted for other stationery. No good opportunity or excuse for placing one of these cards should be neglected, but they should be confined to business opportunities, and never extended to social uses.

Announcements

A good opportunity for effective advertising, which should never be overlooked, comes when the location of the

lawyer's office is changed, or whenever there is a change in the firm. These opportunities should be utilized by sending printed or engraved announcements to every one with whom the office has ever had any dealings. It is a good plan to keep a list of addresses of all clients and possible clients for just such purposes.

Law Lists

The foreign client is the one who would be influenced by seeing your card in the local newspaper, but he has not the chance. The only way to reach him is through the Law List. Membership or representation in a good Law List is good advertising, and it is not always to be measured by the direct returns you are able to trace to it. If you have not exclusive representation in the list, it is worth while to carry with your name a few lines as to your special facilities, with banking references. If you have exclusive representation, this is not so necessary, though it may be well to do so, and certainly if your co-representative does so.

Much money is wasted in patronage of Law Lists through unintelligent selection of the list. Do not sign a contract with a list with which you are unfamiliar without making inquiry as to its business producing powers. If you have no other way of ascertaining the character of a list, pay the small membership fee in the Commercial Law League of America, and write the secretary about it. He will gladly furnish you with data from which you can judge the merits of the list.

Whenever you sign a contract with a list, see that it is as liberal as it is possible to secure. You can get desirable concessions better than at a later time. See that all the neighboring towns and hamlets which are unrepresented, and in which you can handle business,

are referred to you. The smallest place may bring you the largest item of business.

Having secured representation in a list, do not allow your contract to expire without renewing it, unless you are sure the expense is a dead loss. The fact that your name is removed and another name substituted is apt to affect unfavorably the minds of those who have no other way of judging you.

Cultivate close relations with the list publishers. If you have occasion to use their complaint department in connection with business you have forwarded to other attorneys over the list, conduct your end of the negotiations in a manner which shall impress them with your business sense. If, perchance, the complaint department gets a complaint against you, let them have a reply as soon as possible, and let it be responsive to every allegation in the complaint, and adjust promptly anything which should be adjusted by you. The list publisher is interested in every representative in the list, and, having confidence in you, he can secure for you far more benefits than he otherwise could.

Law Lists, even those that are good producers, are of two kinds. One may confine its canvass for forwarding business to mercantile agencies and intermediate forwarders. In that case all the business which will be forwarded to you over the list will be on the basis of a division of fees, and its net results will not be so great as another list, controlling no larger volume of business, but which comes directly from clients, who do not expect a division of fees. Other lists secure business from both of these classes. Some lists require as a condition of the contract for representation that the lawyer will make free financial reports to mercantile subscribers. All these matters should be inquired into,

and taken into consideration in making the selection of a list.

Many mercantile agencies and firms of attorneys make it a condition of their sending business to an attorney that he shall pay a fee for representation in a list published by them. It is our belief that all these offers should be rejected, and that this can be done without jeopardizing any business which you might otherwise secure. These agencies invariably send business over some bonded list, regardless of any list they may pretend to publish themselves. We do not refer here to well-known mercantile agencies, known to publish lists, and also to use them in sending out business as far as possible.

Personal Representatives in Large Cities

This is a new agency for securing business, only offered to attorneys in recent years. We believe the oldest agency of the kind was established a dozen years ago. The fact, however, that one concern of this kind has existed for even twelve years, and that it continues to represent many of the same clients it had at first, which we understand is the case, speaks well for the plan.

We know of several representatives of this kind who look after the interests of outside attorneys in New York City. They are honest, and actuated by the best of intentions toward their attorney clients, and there is no question but that in so large a forwarding center they must find frequent opportunities for rendering their clients substantial services.

We believe, however, that these benefits could be increased manyfold if attorneys making contracts with them would realize that in many cases where benefits may be secured it is for them to take the initiative. It happens probably more often than the other way that

the attorney at a distance from New York knows a way in which his representative there might help him, when the man in New York has no way of finding it out.

If you make a contract for personal representation of this kind, treat your representative just as you desire to have your clients treat you. Let him know every time there is an opportunity to help you, advising him of all facts necessary to guide his action. In other words, make him a convenience every time you can. He can save you many trips to the metropolis. He can secure business to be forwarded to you outside of regular channels, if you will advise him of its possible existence. For example, some interest in your field is likely to be the subject of litigation, and some of the parties who will want to be represented reside in New York, or can be influenced from New York. Your representative cannot possibly know anything about the matter. Write to him about it, and suggest how he can help you. These representatives do control a large amount of ordinary forwarding business, and they are also good men for you to consult in selecting a Law List, and they will aid you in securing liberal contracts with the publishers.

Unwise Advertising

We should include under this heading all cards in theater programs, hotel registers, and similar catch-penny mediums. They are unwise as an expenditure of money, and unwise as methods, even though they cost you nothing, as such efforts at publicity are far from being in good taste. Also do not allow yourself to be caught by the sleek individual who comes into your office with a proposition for running a biographical sketch of yourself, and your portrait, in a county

history just about to be issued. This is about "the worst ever" as a means of gaining publicity for a lawyer.

Joining Professional Associations

We think no lawyer makes a mistake who joins the organizations of his profession, keeps up his membership, and attends and takes part in the meetings. By all means affiliate with the local and county Bar Associations, if there are any. The state association is not an expensive project, ordinarily, and membership in it adds to your standing in the profession. If you are interested in commercial lines, join the Commercial Law League of America, and take as active a part in its business sessions as you can. The American Bar Association, of course, represents the "thirty-third degree," and membership in it is a distinct advantage to any lawyer. Learn as much as you can, absorb all you can, at the meetings of any associations you do join, impress yourself on others there as much as you can, and afterwards strengthen in every way possible the connections formed at these gatherings.

The Best Advertising

There is a great difference between professional advertising and any other kind. The merchant or manufacturer has something to sell which may be inspected. The lawyer has not. A lawyer is the object of much interest to every one in his community who feels that he may have occasion to employ him, or some one else. They like to take advantage of every opportunity for sizing him up. A satisfied client is the best advertisement he can have, so far as his influence extends, but often this is not very far. The next thing to having his wares on view for inspection is to be doing something worth while that will attract favor-

able attention or perform a real use in the community.

Lawyers have every facility for doing such things, without expense and with practically little effort; but the trouble is that many of them lack originality, or, if a good thing does occur to them, they are quite apt not to have sufficient confidence in it to carry it out. This comes from being so constantly in an office over a desk, from too much theorizing, losing contact with active practical affairs.

A modest law office usually contains one lawyer and one stenographer, each of whom give it from eight to nine hours a day. It also contains furniture worth not less than \$150, a \$100 typewriter, and \$250 worth of books. It consists of two rooms, an outer and a private office. We will place the rent at the modest sum of \$25 per month, the stenographer's salary at \$50 per month, and to this add \$3 per month for a telephone.

There is no extravagance here, is there? Yet, when we think that there are few days in the year in which either the lawyer or his stenographer is busy all the time, and that, with the long summer months, when business is practically at a standstill, there are many days in which neither does anything at all, and that there are many books in the library costing nice little sums, which are not looked into from one year's end to another, we see that the waste proportioned to the amount invested is much larger than would be permitted to continue in any other business.

The druggist, for instance, puts in a soda fountain, a cigar stand, confectionery, books, and many other lines, until his store is the busiest store in town, and the clerks earn their wages every hour of the day, and his fixtures pay for themselves many times over.

The lawyer can do this as well as the

druggist if he will. There are numerous side lines in law work, all professional, and all just as much in harmony with a select practice as the side lines adopted by the druggist are to pharmacy. They will serve to employ the lawyer's spare time in a way that will increase his knowledge of the law and make him more resourceful. They will also keep stenographers and other assistants profitably employed, make the investment in library yield a constant return, and give

the office that busy appearance which, in itself, is one of the best advertisements a lawyer can have. All the plans suggested can be conducted so that they will be direct sources of profit in themselves, and indirectly they will give him just the kind of publicity he wants. They can be carried on extensively or in a limited way, as suits the lawyer's humor, and with proper effort and attention they can be made to pay an independent income.

Practical Legal Education

By PAUL L. MARTIN, A.M., LL.B.
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THE most interesting question confronting legal educators at the present moment is how to prepare law students most effectively for practice. True, there are many students who do not intend to enter upon a career at the bar, studying law for its cultural value, or because it will supplement their preparation for business; but most men who complete a law course intend, or at least hope, to use it as a means of earning a livelihood. From their standpoint, therefore, it is important that legal education be genuinely and immediately helpful, that it be something more than a careful consideration of the process by which law has been evolved, something more than a discipline of the intellect, something more than a storing of the memory with a mass of legal principles. All these are important, but they are not sufficient; for they fail to fit the law graduate for that immediate service which he aspires to render.

His theoretical knowledge, to be available for immediate use, must be supple-

mented by at least a sufficient training in practice to point the way along which the young lawyer must go in the discharge of his professional duties. Not that any school can anticipate the advantages of experience, or, by any process, so prepare its graduates that Minerva-like they can spring from the Commencement exercises full-panoplied for the conflict of the courts or the routine of the office. No one, however enthusiastically he may champion the importance of preparation for practice, would even suggest that this goal is attainable; but there is a vast difference between doing nothing and doing all one can along practical lines.

At this point an interesting controversy has arisen. Some legal educators say there is not enough time in a three-year course to give instruction in practice and procedure, if proper attention is paid to thorough training in the science of law. They insist that the student who has properly studied the principles of law will be able to adjust

himself to the demands of practice, experiencing in the beginning, of course, some difficulty, but eventually working to the light. Some of the oldest and most influential schools are committed to this view.

On the other hand, there is a large and gradually growing group of law teachers who, while demanding thorough training in the science of the law, do not overlook the importance of practice. They call attention to the fact that the lawyer must combine both theory and practice, art and science, if he would succeed, that law schools exist to fit men for the bar, and should therefore give instruction in both theory and practice, if their preparation is to be adequate.

It is safe to say that the distinct tendency of legal education is toward a better combination of theory and practice, and that a new emphasis is being put upon the practical phase. For instance, at the last meeting of the Association of American Law Schools an able paper was read by Dean Hastings, of the University of Nebraska Law School, upon "Practice Courts," and the discussion evoked by the dean's treatment of the topic showed a deep interest and a widespread effort to devise some machinery by which law students may be better fitted to perform the duties of the legal profession.

Admittedly the difficulties are great, but the goal is worth achieving. Various plans have been tried, and all are open to some objection; the chief one being that the fictitious nature of practice court work precludes an exact reproduction of the conditions which prevail in actual practice. For instance, witnesses who testify to an agreed statement of facts which they have memorized offer little chance for effective cross-examination; then, too, if many cases are to be tried, the time allotted for each must, as a rule, be less than in actual practice, and this

abbreviation introduces an element of fiction which complicates the situation, shortening or eliminating, as it must, a proper examination of the jurors, the making of arguments, whether upon the facts or the law, the giving of instructions to the jury, and the taking of the various steps necessary to perfect the appeal and prosecute the case to a final adjudication in the court of last resort.

Only those who are familiar with the difficulties besetting the conduct of an adequate practice court can have any appreciation of the problem. But it is a problem which must be solved if the schools are to make the largest contribution toward the common good by preparing men who are competent to undertake the practical work of the legal profession. It is the glory of the schools that they afford opportunities for systematic study of the law; but this glory will be enhanced a hundredfold when the course is broadened to include that effective preparation for the bar which it is the task of the practice court to impart.

Medical students spend the major part of their last two years in school attending the hospital and dispensary clinics, where they learn to apply practically what they have gleaned from the books. Students of dentistry, of pharmacy, of engineering, are required to supplement the training of the classroom by actual practice, proficiency in which is made a condition precedent to graduation. True, in law the conditions of these other professions are difficult to duplicate, for the doctor, the dentist, the pharmacist, the engineer, enjoys the advantage of working on actual cases, instead of fictitious ones; but this advantage only emphasizes the importance of planning practical work for law students which will adequately prepare them for the profession.

In some of the larger cities legal aid

dispensaries have been established, where law students, under proper direction, handle the cases of indigent clients. One school has for some years maintained an office where the students cared for such cases, and through a special legislative act were allowed to appear in the courts of record as associate counsel with practitioners admitted to the bar. Another suggestion, which has the advantage of coming from the American Bar Association and of having been recommended by a number of lawyers, who as examiners of applicants for admission to the bar have had unusual opportunities for observation, is that no man be admitted to practice who has not completed a three-year course in a reputable law school and spent at least one additional year as an apprentice in the office of a practicing attorney in the state where the applicant seeks admission.

One difficulty with the dispensary system is that of patronage, for except in the largest cities the average indigent litigant should have no difficulty in securing an attorney to represent him upon a contingent fee, if the case is worth the attention of the dispensary. The apprenticeship plan would seem to be unworkable, because the average law school would find it impossible to so place its graduates as to insure a systematic, properly balanced, properly supervised course in practice at the hands of practitioners whose business was varied enough and large enough in volume to warrant the student's devoting a year to such a task.

The best plan seems to be found in the organization and maintenance of practice courts, to which sufficient attention is paid to insure systematic, patiently supervised instruction in the application of the law. It may be that the law course should be lengthened to four years, thus conforming to that in medicine, and that the last year should be

devoted mainly to practice in the courts of the school, supplemented by required attendance at selected trials in nearby courts. As a matter of fact, much of the practical training offered by our medical schools consists in watching the professors as they diagnose and treat medical cases or operate upon surgical cases. Similar instruction could be given by required attendance at selected trials, of which the students would be asked to make reports, based upon a careful study of the pleadings, the evidence, and the law involved. The element of fiction would thus be eliminated, and, in addition to learning something of the machinery by which cases are disposed of, this plan would have the advantage of imparting instruction in court room conduct, the attitude of counsel toward the court, toward each other, toward the jury, and the witnesses.

Of course, this plan would give little or no instruction in the work preceding the trial; but much of this phase could be covered by conference with those in charge of the practice work, particularly if supplemented by the trial of cases in the courts maintained by the school. Whatever the solution of the problem may be, it would seem that the demand of judges and lawyers for better trained law graduates must be granted, if the law schools are to realize their largest opportunities.

Another problem, closely associated with the one just discussed, is that presented by the question as to how much preliminary training the applicant for admission to the bar should have. Under the statutes of this state (Nebraska) the equivalent of three years' high school work is required; but the distinct tendency, at least in the stronger schools, is toward demanding, not only a completed four-year high school course, but at least one year of college. Those who have had experience with the college re-

quirement seem to be more than satisfied, even though the number of students has been materially reduced; the improved intellectual equipment of the student body more than offsetting the decrease in enrollment.

So far as the requirements of the states are concerned, as distinct from the standard required by the schools, it is interesting to note that, according to a recent tabulation made by the Regents of the University of New York, there are no preliminary educational requirements in the following states: Alabama, Alaska, Arizona, Arkansas, California, District of Columbia, Florida, Georgia, Hawaii, Idaho, Indiana, Kentucky, Louisiana, Maine, Maryland, Mississippi, Montana, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming. The following states require completion of a high school course or its equivalent: Colorado, Connecticut, Illinois, Iowa, Kansas, Massachusetts, Michigan, New Jersey, New York, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Vermont, Washington, and Wisconsin.

It would seem, therefore, that Nebraska's requirement is too low, and that at least four years of high school train-

ing should be required, particularly in view of the fact that our schools are so numerous, so easily accessible, and so well equipped that any deserving young man can secure at least this much education.

On the theory that the more preliminary training one has the better he is fitted for the bar, we should hold up as an ideal worth striving for an advanced requirement of at least one year of college education for those who would engage in the practice of law, and the recommendation of this association, made last year along this line, should be renewed, not out of a spirit of class distinction, or out of a desire to build up a petty aristocracy, but because of a conviction that the task which confronts the lawyer of to-day calls for the best possible equipment, and that, if we would faithfully discharge the duties of our profession, we must see to it that all who aspire to the lawyer's exalted state must be provided not only with suitable preliminary training, but must have been educated under a system providing for a proper combination of theory and practice, illuminated by the light of those high ideals of morality and right living without which all seeming success is but a sham, apparent victory, the tawdry triumph of an hour.

Solicitors and Their Clerks*

An Interview with a Client

By A WORLDLY SOLICITOR

WORLDLY SOLICITOR (laying letter on table).—Well, my old friend Meadows, you're safe, I think; but let's hear what he has to say when he comes.

* * * * *

W. S.—Very well, Quiller, show him in—show him in. (Exit Quiller.) (Enter Mr. Meadows.) Hullo! Meadows, how are you? Sit down—sit down—and what's your news, eh?

Mr. M.—Well, you know from my letter what has brought me up.

W. S.—Yes—that chap of yours seems to be a precious rascal, eh?—a precious rascal—never suspected him?

Mr. M.—Never—always thought he was a quiet, honest, hard-working chap—so he was for many years—can't think what made him go wrong—seems he had helped a rascal of a ne'er-do-well brother, and this had pinched him, and he wanted money for him, and then, I suppose, he knew that if he did this swindle he would have to scoot for it and join his brother, so he took a bit for himself.

W. S.—Well, tell me more about it.

Mr. M.—Well, to cut a long story short—or as short as I can—I have an old lady client—or rather had, she has naturally gone to another solicitor—I gave you the name in my letter—

W. S.—Yes, yes; it doesn't matter for the moment.

Mr. M.—I can't quite say how it all came about, but this old woman—Mrs. Buxomer—got into the habit of seeing this precious managing clerk of mine, William Fawkes, and so things went on, until she always saw him—I could not stand the old woman, and, perhaps, I was fool enough to let her see it—however, she always saw Fawkes—the office used to say she was after him.

W. S.—Bachelor?

Mr. M.—Yes. Well, she came to see him one day about some property which she has at Cinchester—she wanted a bigger rate of interest, and she told Fawkes to sell some houses and to call in a mortgage. Well, Fawkes seems to have induced her to convey the property to him, and to transfer the mortgage to him—some yarn about saving her a lot of trouble and saving expense and stamps. My office apparently knew nothing about the transaction.

W. S.—Could he get the deeds without application to you?

Mr. M.—Yes.

W. S.—Did he draw the necessary deeds for putting the property into his own name?

Mr. M.—Yes.

W. S.—Did not your office or some law stationer engross them?

Mr. M.—No; we now find that he did it all himself—took the work home.

W. S.—To whom did he sell the property?

Mr. M.—Unfortunately to a stranger. Probably had he sold to some one in Cinchester, some inquiry might have

*One of a series of articles entitled "Interviews with Clients," which has been running for several years in *Law Notes*, a popular legal magazine published in London for the benefit of English law students.

been made as to how the property came to be in his name, but he seems to have got into touch with some one in London who bought the property.

W. S.—What about the mortgage money?

Mr. M.—He gave notice to pay off, and produced the transfer to himself, and the mortgagor paid.

W. S.—How long was the property in his name?

Mr. M.—About six months.

W. S.—How did he account to Mrs. Buxomer for the delay?

Mr. M.—Ah! we don't know; but he kept her quiet.

W. S.—Well?

Mr. M.—Well, having sold the property and got in the mortgage money, he sloped. Got a few days' leave of absence to see an old uncle in London on whose death he had certain expectations—sloped, and has never been seen or heard of since.

W. S.—What is the amount lost?

Mr. M.—Roughly, two to three thousand pounds.

W. S.—And now?

Mr. M.—And now Mrs. Buxomer has consulted Snark—a sharp customer—and he threatens me with an action alleging that a solicitor is liable for the fraudulent acts of his clerk, on the principle that a principal is liable for the acts of his agent.

W. S.—Rather wide statement.

Mr. M.—But the act, as I pointed out to him, has to be done within the scope of the agent's authority and for the master's benefit, and it is not within the scope of a solicitor's clerk's authority to act as principal.

W. S.—He was your managing clerk, wasn't he?

Mr. M.—Yes.

W. S.—And permitted to see and advise clients?

Mr. M.—Yes.

W. S.—In short, he was acting as your conveyancing managing clerk?

Mr. M.—Yes; but surely it is not within the authority of a conveyancing managing clerk to induce a client to transfer property into his own name. She's an old fool, but she can't be such an old fool as to think that if she wanted to sell property she must first of all put it into a clerk's name.

W. S.—True—but you are not liable for another reason.

Mr. M.—What?

W. S.—The act was not for your benefit, it was for his benefit. It is essential, to make a principal liable for the fraudulent act of his agent, that the act shall be for the principal's benefit.

Mr. M.—Quite so.

W. S.—In *Lloyd v. Grace, Smith & Co.* the facts were somewhat similar, and Lord Justice Farwell, in giving judgment, overruling Mr. Justice Scrutton, said that the rule laid down in *Barwick v. English Joint Stock Bank*¹ could not be qualified by striking out the words "and for the master's benefit" as Mr. Justice Scrutton had done. These words, said Lord Justice Farwell, must now be regarded as an integral part of the law of agency.

Mr. M.—Seems only right, does it not?

W. S.—Yes. Now, in such a case as this, said his Lordship, a plaintiff to succeed must prove the agent's authority—if she knew, or ought to have known, that the agent's authority was

¹ L. R. 2 Ex. 265. And see *Turberville v. Stamp*, 1 Ld. Raym. 265; *Huzzey v. Field*, 2 C. M. & R. 432; *Limpus v. L. G. O. Co.*, 1 H. & C. 527; *Mackay v. Commercial Bank of New Brunswick*, L. R. 5 P. C. 394; *British Mutual Banking Co. v. Charnwood Forest R. Co.*, 18 Q. B. D. 714; *Houldsworth v. City of Glasgow Bank*, 5 App. Cases, 322; *Ruben v. Great Fingall Consolidated* [1906] A. C. 444.

limited, she could not be heard to complain as against the principal that the agent had, without her knowledge, exceeded his authority. In such a case it is open to the principal to dispute the extent and the existence of the authority, and to deny that the agent's act was done for his benefit, and such a defense is a complete answer unless the doctrine of estoppel prevents him bringing forward such evidence. To take a conveyance of property in his own name is clearly not within the ordinary duties of a clerk, and no one could be heard to say that he or she believed it to be so—unfounded or unreasonable belief by persons as to the duties of a solicitor's clerk cannot enlarge the agent's authority.

Mr. M.—That seems to clear me of all liability with regard to Mrs. Buxomer.

W. S.—Yes.

Mr. M.—Well, there's another case.

W. S.—You didn't mention that in your letter.

Mr. M.—No, I only heard of it yesterday. It seems that this precious rascal, without my knowledge, saw and advised a Mrs. Hugon about raising a mortgage on her shop. She left the title deeds with him. It seems that he prepared and engrossed himself a conveyance to himself and forged her signature and the name of a witness, and sold the property through some London auctioneers in his own name. Mr. Snark has her case also in hand. How do I stand here?

W. S.—How much this time?

Mr. M.—About £500.

W. S.—Well, I suppose the same principle applies—the act must be done for the master's benefit.

Mr. M.—Ah! but I read Farwell's judgment, and he said if she had handed the deeds to the clerk for him to advise on and deal with in the usual way, the principal might have been liable. What did his Lordship mean by that?

W. S.—Difficult to follow, isn't it?

Mr. M.—Very difficult—in a sense Mrs. Hugon handed the deeds to my clerk to advise on and act, but what he did was not for my benefit.

W. S.—True—if the act must be for the master's benefit, it looks as though a solicitor is practically under no liability for the acts of his clerk, for a solicitor's clerk, when he does a swindle, always does it for his own and not the solicitor's benefit.

Mr. M.—Just what I was thinking.

W. S.—Of course, there is our old friend *Limpus v. L. G. O.*,² a case where the tortious act was done in the principal's interest, and the principal held liable, but it is difficult to imagine a case where a solicitor's clerk would misappropriate moneys except for his own benefit. Of course, a devoted servant *might* do it for his master's benefit, but such a case would be rare.

Mr. M.—Yes, but to get back to my two cases.

W. S.—Yes. I should say that, since this case, you are not liable in either case, for in neither case was the act done for the master's benefit, and this is "an integral part of the law of agency." I suppose practically you will have to meet them, won't you?

Mr. M.—Yes; I suppose so, only I want to understand my legal position. Of course, it's all right, and I'm pleased to find I'm not liable, but for my reputation I shall have to make it good. To be quite frank, I feel a bit guilty—I've slowly let that fellow get too much power, and I shouldn't be a bit surprised if the court did not take the same view.

W. S.—Well, in this case, *Lloyd v. Grace, Smith & Co.*, Lord Justice Vaughan Williams dissented from Lord Justice Farwell and Lord Justice Kennedy.

² 1 H. & C. 527.

Mr. M.—Ah! ah! I'm not wholly surprised.

W. S.—Yes, Lord Justice Vaughan Williams said that in his opinion there was evidence that there was such a holding out as to estop the defendant from asserting that Sandles—the clerk in that case—had no authority to receive the deeds and take instructions, even though at the time that he received the deeds and took the instructions he was minded to commit the frauds. It was plain also that the defendant held out Sandles as his agent, from whom his clients might receive advice. Lord Justice Vaughan Williams said that personally he should hold the defendants liable.

Mr. M.—Will it go to the Lords?

W. S.—I don't know.

Mr. M.—If the act must be for the master's benefit, I almost agree with you that practically a solicitor will never—or hardly ever—be liable for the fraudulent acts of his clerk unless in some way he is estopped—perhaps by his own negligence—perhaps I've been a bit negligent letting this chap get so much power and letting him see and advise clients in this way.

W. S.—That may be what Lord Justice Farwell meant, and is what Lord Justice Vaughan Williams said. After all, this case only follows out to a logical conclusion the principle that a master is liable for the fraudulent acts of his servant committed within the scope of the servant's authority, provided that when the servant committed such act he intended the master to benefit, and the

master did, in fact, derive benefit from such act.

Mr. M.—Well, to be on the right side and run no risk of estoppel by negligence, I shall have to stop all this interviewing of clients. In future only my son and I must see clients—in fact, we must do more work and less motoring and golf, for although I am not liable yet I must pay, for my reputation's sake I must pay. I can't help thinking that masters ought to be liable for the frauds of their servants if committed within the scope of their authority, and this whether the master derived benefit or not.

W. S.—Well—well—it's a debatable point—rather a tall order.

Mr. M.—And now I'll be off. How do you keep?—all right?—that's good. We want you to come down to our Flower Show. You generally do. We'll put you up.

W. S.—I shall be very pleased; let me know the day.

Mr. M.—I'll write you. Good-bye. I must catch my train.

W. S.—Good-bye—good-bye. (Exit Mr. M.)

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W. S. (sol.).—Old Meadows must have got a nice little fortune together. He takes a loss of a few thousands as coolly as I should a few pence—wish I had been a good old country and county solicitor—they have a jolly life and make pots of money—but wait a bit—didn't the old boy marry well?—of course he did—almost wish I had done so myself. (Left wishing.)

What One Has to Learn to be a Lawyer

By EDMOND IRVING LA BEAUME

WHEN a boy begins to think about choosing his serious vocation in life, he finds very little definite information to help him in making the choice. Most of us waste a lot of time before we hit upon the occupation for which we are best fitted. This is often unavoidable, but in the case of the professional man there is very little time to waste. The purpose of this article is not to draw men into a somewhat crowded profession by extolling the glories of a life at the bar, but to show those who are thinking of becoming lawyers some of the difficulties they will encounter, with hints for overcoming them. And when I say, "those who are thinking of becoming lawyers," I mean lawyers who intend to practice their profession. I have not the space to speak of the law as an asset to the business man or the politician.

First, what are the natural qualifications that a lawyer should possess? Conversation with those who are preparing men for the bar shows that the lay mind is permeated to an absurd extent with the mistaken idea that the argumentative boy is cut out by nature for a jurist. "I receive letters from fond parents almost every day," said the dean of one large law school, "telling me that their sons will make fine lawyers because they are always arguing. There never was a greater mistake. These people think that a lawyer spends his time disputing in a courtroom. As a matter of fact, even court lawyers, who are a very small part of the legal profession, do about four-fifths of their work outside of court."

Remembering, then, that the mere fact that you are fond of contradicting your elders, and that you sustain your contradictions with aggressiveness and skill, does not necessarily signify that you will one day be a member of the Supreme Bench. Let us inquire into some of the things that are really essential to the successful lawyer. The authority just quoted gave as the mental attributes the lawyer should possess "the power of clear, logical thinking, with the intellectual grasp that enables one to take in many sides of a situation readily, and to distinguish between problems which look alike, but are not, a keen sense of justice, and enough common sense to know instinctively, at least in a general way, what is right for a man to do and what is wrong."

A writer in a legal periodical says: "The law is an intensely intellectual profession, and the successful study of our jurisprudence requires the mastery and control of one's intellectual processes, and the development of one's reasoning faculties, to a degree that is ordinarily attained only after long disciplinary study." Thus we see that success at the bar rests upon something more solid than an unwillingness to admit oneself in the wrong and an ability to give to the wrong the semblance of the right.

Accepting the idea that the law is a scholarly profession, how shall we prepare for it? There are two roads open. You may prepare for your bar examination either by attending a law school or by "reading" law in an office. The former method is preferable, and to-day about seventy per cent. of our lawyers

come to the bar by way of the schools. In many cases, however, the latter method is the only practical one. It is a good one, too, under proper conditions, and it will be discussed later.

For those who can do so it is advisable to take a college degree before entering the law school. The Harvard and Columbia schools demand this. Some of the other institutions require two years, others one year, of college work, and the rest simply enforce, in a more or less scrupulous fashion, the presentation of some proof of a high school education or its equivalent. The law school course usually covers three years. There are some schools in the South which offer a two-year course; but, although they have some warm defenders, all that can be said in favor of the short course seems to be greatly offset by the fact that there is much talk among the larger schools of lengthening the course to four years.

A quotation or two from the writings of legal educators will explain why a college degree is preferable. We find this in the article just quoted: "The law teacher realizes, more keenly, probably, than any one else, because his attention is constantly challenged to the fact, that, as a rule, the strongest students in law are those who had an extended and systematic preparatory training." Another writer says: "We take it to be conceded, at least among our brethren, that there is no profession or calling which requires a broader, deeper, fundamental knowledge than the profession of the lawyer. The various and diverse phases of life with which it deals necessarily require this for the successful practitioner, so that to-day there is a universal demand and a general trend among the law schools of our country requiring a broader fundamental knowledge and a higher mental training on

the part of the student who desires to pursue the law course."

The belief has been expressed that it does not make any difference what the boy who intends to enter the law school studies in college, as long as he gets the mental training that comes from following any systematic course of study. It seems to be the more general opinion, however, that a knowledge of certain definite subjects aids materially in the study of law. Most of these would almost surely be included in any well-rounded college course, so that the boy who goes through college before entering the law school gets his mental training and his useful knowledge together. But for the boy who has only the time and money to go through high school, or at most to spend a year or two in college, all the knowledge he can acquire, which bears either directly or indirectly on the study of law, becomes doubly important.

To understand the law one must know something of its historical development. The law is not a set of rules written out in statute books, which can be learned and applied like mathematical formulæ. It is a living thing, that is subject to change like all living things. In order to understand it, one must be familiar with the processes of change and development through which it has passed in arriving at the point where it is to-day. A lawyer who knows simply the law of the community in which he practices is like an engineer who knows his formulæ by rote, but knows nothing of the mathematical principles involved in their derivation. But just as it is impossible for an engineer to carry all the necessary formulæ in his head, it is impossible for the lawyer to carry in his head the whole body of law that he is called upon to use. Both have their books to fall back upon, and both

are helpless without them; while the lawyer, who understands the principles upon which his formulæ have been built up, can construct the law or the formulæ in an emergency.

At best the man who knows only rules can approach the likeness of a machine which is useless if one of its parts is lost. The man who knows principles can learn the rules with less effort, and if he lose one of them he is no whit dismayed, for his mind is stored with resources for meeting such a contingency. To be successful, a lawyer must be resourceful. The law is not an exact science, like mathematics. It is more subject to change, and for this reason it is all the more important that you who intend to use it should understand its principles, so that you will not gape stupidly if a rule is wiped away and even your books do not give you the new one.

And, as we have said, these principles can only be understood in the light of their historical development. In an address made as president of the Association of American Law Schools, Prof. W. P. Rogers said: "The development of civilization and the advance of civil government are so interwound with the growth and development of the law that, in pursuing either, one cannot avoid the other, and the student who has completed a course in history is delighted and charmed later with his legal studies, when he discovers himself frequently crossing and traversing familiar paths." You who wish to be a lawyer cannot acquaint yourself too thoroughly with history—particularly social and constitutional history.

The so-called "common law," which is the law of all but one of the states of the Union, is based upon the common law of England, which in turn goes back to Roman law for its inception. Thus we may narrow down the most impor-

tant part of our program of historical study to that which deals with Rome, England, and the United States, as far as it is possible to study the history of one of these without reference to that of neighboring civilizations.

Probably the subjects of next importance in leading up to the study of law are economics and social and political science. At least an introduction to these studies is found among the courses provided for the freshman or sophomore year in most colleges, but they are seldom taught with anything like adequacy in the high school. It is for the student who must combat the disadvantage of not having a college education to gain by private study as thorough an insight into them as possible.

Attention to the art of written and oral expression cannot be too strongly urged. The former is necessary to all lawyers. The latter is necessary to some, and is a useful accomplishment to all. To quote Professor Rogers once more: "We should all agree that one cannot take too much of what is generally designated as the course in English, for the lawyer who can use with fluency and accuracy the words of the English language is well equipped for the law, though he may be ignorant of other languages."

Of oral expression he says: "And to every young man, who contemplates a life at the bar, I would say, miss no opportunity to cultivate this art. Take advantage of every occasion which gives you a chance to think and talk in public."

As accuracy is one of the pre-eminent requirements of the legal practitioner, mathematics, and other studies which induce it, are of great importance as mental training. When you present a case or draw up a brief, the watchful adversary will take advantage of any in-

accuracy on your part, and you should begin early to cultivate that sureness in your work that will come at first only with conscious, methodical painstaking, but which in time will become a habit of incalculable value to you.

There have been so many good lawyers in this country who never saw the inside of a law school that it is impossible to ignore the law office as a place to prepare for the bar examinations. But never think that because you do not have to present a certificate to enter an office that you can afford to neglect the preparatory study that the certificate stands for. On the contrary, the boy who has let his mind run wild and undisciplined will stand a better chance in the law school, where his work will be systematized for him, and where he will be under the guidance of instructors, than in an office, where he will have to rely on his own resources to a far greater degree. Such a boy has no business to study law anywhere, but least of all in an office.

If you are sure that you are mature enough to keep up a strict course of study more or less by yourself, the first thing is to find a lawyer who will take enough interest in you to direct your work. It is too much to suppose that you will find one who can spare the time from his practice to give you the same attention that you would receive from the professors in a law school, but your road will be a hard one indeed if you fall upon a man who takes you in simply to secure your services free. For in these services lies the pitfall most to be dreaded. From the first day you enter the office you will be able to make yourself useful in some way, if only by

finding a book on the shelves. And as time goes on you will become accustomed to common procedure, and will be intrusted with more and more important work. You will soon know more of practice than the average law school man ever knows on graduation; but the great danger is that you will be led to neglect your text-books for the practical work. If you do, you are lost. You may be admitted to the bar; but, as has been said, you can never be anything but a wooden, resourceless, machine-like lawyer, if you are ignorant of the theoretical side of your profession.

Do not decide to be a lawyer unless you can make the sacrifice necessary to be a good one. If you have an independent means of support that will enable you to pursue your studies tranquilly, and will carry you over the first years at the bar, which usually bring in a rather meager recompense, your case is not such a difficult one. But if you must earn your living as you go along, the necessary sacrifice will be great, and you should face it squarely before you start out.

It is from this generation of young lawyers that the judges of the next generation will be chosen. In any community a corrupt bar will produce corrupt judges, and an ignorant bar will produce ignorant judges. The quality of the law depends ultimately on the competence and integrity of the practicing lawyers, and whether you are destined to preside over the highest court, or to be a humble practitioner in the lowest, you should feel that the responsibility for meting out justice to your fellow-men rests upon your shoulders.

—*The Green Bag.*

A Defense of the Case System and a Criticism of Casebooks

By SAMUEL PETERSON
Of the Houston, Texas, Bar

THE Winter Number (1912) of the American Law School Review published a comparison, by Professor George Chase, Dean of the New York Law School, of the Use of Treatises and the Use of Casebooks in the Study of Law. This article points out that casebooks require far more reading matter than do treatises in order to cover the same "field of legal knowledge," and the conclusion is implied, if not expressed, that the text-book system is superior to the case system in preparing a student for the practice of law. The underlying assumption is that knowledge of law makes a lawyer, and the man that knows the most law is the best lawyer.

This assumption is erroneous. To the layman it no doubt appears to be the simple truth, but every lawyer that is a lawyer knows it is not true—knows from the experience of his own development as a lawyer, knows from his acquaintance with and observation of his fellow members of the bar. A lawyer is a man with a legal mind. A legal mind is one trained to apply legal rules or principles to facts. And mere knowledge of a rule of law is different from the ability to apply it.

For example: It is a rule of law that the master is liable for the acts of the servant within the scope of the employment. This is a simple rule; a child can learn it. But take an actual case, even one where the facts are simple, like that of Missouri, K. & T. Ry. Co. of Texas

v. Edwards, 67 S. W. 891, and try to apply this rule.

While a Katy passenger train was standing at the station in Denton, Texas, the brakeman went to a saloon or restaurant. As the train was moving away he returned hurriedly, and in so doing ran into Edwards and knocked him under the train. Edwards' arm was crushed by the wheels. He sued the railroad company for damages. The question was whether the act of the brakeman was done while he was in the discharge of his duties.

The rule of law is simple. The facts are simple. But ask a child whether the act of the brakeman was within the scope of his employment—ask yourself—and see whether the application of the rule to the facts is a simple matter. You will realize that this process requires something more than a knowledge of the law and of the facts; that it requires a mind trained in the analysis of facts and in the application of legal rules to facts.

It is this trained mind, and not their respective funds of legal knowledge, that distinguishes the good lawyer from the inefficient. There never has been, and is not now, a great lawyer who is a young man. There have been great poets, orators, generals, statesmen, business men, who were young men, but no lawyers. Why? Because of the necessity of this trained mind. Men have been able to devote themselves to some pursuit or profession until the age of

forty, and thereafter to become masters in some different profession other than the law. But no great lawyer ever began the study of law after forty years of age. Why? Because it takes at least twenty years of legal training to make a lawyer of the first rank, and before a man over forty could get this training his mind would have lost some of its amenability to training.

What, then, is the chief purpose of a law school? Is it the imparting of a knowledge of the law, or is it the making of lawyers? There is only one answer. The chief purpose of a law school is to make lawyers, and the imparting of a knowledge of the law is incidental. The chief purpose of a law school is not to try to impart as large a quantum of knowledge as possible, but to try to train the minds of the students to as high a degree of efficiency as possible in the application of legal rules. It is almost a matter of indifference whether the student learns much or learns little in the way of rules of law, provided he learns the fundamental principles; for, as a matter of fact, by the time he has an opportunity to make use of them in actual practice, he has either forgotten, or remembers indistinctly, the great mass of rules set forth in the text-books studied. And whether a lawyer knows much law, or little law, in every case he has he makes a special study of the law applicable thereto, and relies very little on his memory of what he learned as a student.

The case system teaches the fundamental rules of law, the only rules which the student remembers from his text-book studies. And it impresses these rules upon the mind better than text-books or lectures can. So that, in the end, the student really has as great a fund of legal knowledge from the case system as from the study of text-books. But the case system does more than

teach these rules. It shows how they work. It gives a practical, together with a theoretical, knowledge of the rules. The student not only learns a rule, but he becomes acquainted with it. And there is a difference between knowing something, and being acquainted with it.

For example: We all know what an elephant is, but very few are acquainted with an elephant. If one of us were to be placed in charge of an elephant, we would not know how to handle him or make use of him. This requires acquaintance. To get acquaintance, we must handle and use. So with an automobile. Knowing what an automobile is, and knowing how to run it satisfactorily, are quite different matters. The latter requires acquaintance, which can be obtained only by experience. Knowing who a man is, and being acquainted with him, are likewise different. It only takes a moment of time and a minimum of effort to learn what a thing is; it requires considerable time and effort to get acquainted with it.

So with a rule of law. It is easy to learn. But to get acquainted with it—that is, to get such a knowledge of it that you can make use of it—requires actual experience in handling it and making use of it. And making use of it means to apply it to facts. Take the matter of consideration in a contract. I learned the definitions in the books, and passed examinations on them; but it was not until I got hold of Langdell's Cases on Contracts that I learned to know the real nature of consideration. Incidentally I discovered that the definition most preferred by the text-books, and which I had always relied on, was wrong.

The difficulty with the casebooks in use at present is that they themselves contain the application of the rules to the facts. The consequence is that if the teacher does not know how to teach—

does not know how to make the student himself apply the rule to the facts of a case—the student will merely learn what the opinion says, and will not develop, as he should, his power of analyzing the facts and reasoning on the application of rules. It is exactly as if a person should try to learn to play the violin by closely observing an expert play. The way to learn is to take hold of the violin, and, under the guidance of an expert, try to play. A student learns rules of law in order to use them; that is, to apply them to facts. To acquire the ability to use them, he must practice applying them to facts, and not merely observe some one else apply them. This objection to the casebooks in use may be summed up by stating that they might more properly be called opinion books.

There is another objection to the casebooks in use. A rule of law is not always set out distinctly. It must often be gathered from an opinion, in which it is discussed in such a way that trained lawyers may differ as to the rule really laid down. This is a desirable feature in one way. It teaches the student how rules of law are created, developed, modified, and distinguished. But it hinders the student in acquiring a definite idea of what the rule itself is. Knowing what a thing is is more important than knowing how that thing came to be what it is. In this respect the text-books are superior to the casebooks.

The work of a lawyer is to apply rules to facts. He gets the rules from his

law books, the facts from his clients. Why should not the teaching of law be modeled accordingly? Why not furnish the student with the rules, and with the facts, and let him apply the former to the latter? This would be doing real lawyer's work. It seems to me inevitable that the system of teaching law must advance another step. Books must be prepared in which rules are laid down, accurately and concisely (omitting the discussions of the rules), each rule followed by a number of "cases." By a "case" I here mean merely a concise statement of the facts of a case. Then let the student apply the rule to the facts. The above statement of a rule from the law of master and servant, and the accompanying statement of facts from *Missouri, K. & T. Ry. Co. v. Texas v. Edwards*, will furnish an example.

An idea of what such a book would be like may also be obtained from the Hornbook Series, by taking the "succinct statement of leading principles in black-letter type," and, in place of the "commentary," inserting a number of "cases." These "cases" could be obtained, either by making concise statements of the exact facts in reported cases, or by modifying the facts of such cases, or even by invention, as among the Roman jurisconsults.

This system will not do away with treatises, except those prepared especially for students. The students will still use treatises, but will use them as the practicing lawyer and judge use them.

Questions on Professional Ethics

THE Committee on Professional Ethics of the New York County Bar Association has been empowered to give advice to inquirers upon the propriety of professional conduct, and interesting questions of various nature have been submitted to and answered by it. Among the questions recently submitted to and answered by the Committee were the following:

Question: May I know whether, in the opinion of your Committee, it would be unprofessional for an attorney, who is the counsel for an association, to send out letters to a number of its members suggesting employment upon an annual retainer?

Answer: In the opinion of the Committee it is desirable that such solicitation of business should be discouraged. The Committee deems it unprofessional.

Question: Over a year ago a client, whom we had represented for some time, introduced to us a Mr. X., who requested us to represent him in various matters. Our relations continued on a pleasant basis for a period of several months, during which time we undertook litigation in various courts for X.

About three months ago we informed X. that we would no longer be able to act as his attorneys, unless he paid us for our services. Mr. X., who originally paid us a retainer of \$200, agreed that we were entitled to receive a sum of several times that amount for services performed to the then date, and stated that he would arrange to let us have a check in a few days.

Since that time Mr. X. has studiously avoided our office and ignored all communications. We appear as attorneys for him in a number of litigated matters. We do not desire to continue to represent a client of this type. We have requested him to have other attorneys substituted in our place, but he has paid no attention to our requests. We wish to drop all of his matters, but we do not wish to be accused of having been unfaithful to the trust originally reposed in us as attorneys by this client.

We would appreciate advice from you as to the manner in which we should proceed in order to be permitted to cease acting as his attorneys.

Answer: Upon the facts as stated, the Committee does not consider that the attorneys are required by any professional obligation to continue to represent the client. It is of the opinion that a peremptory notice to the client that after a certain specified date, sufficiently far away to enable him to secure and substitute new attorneys, they will not act as his attorneys, is proper. This answer, however, does not deal with the attorneys' legal right to compensation upon taking such course, nor with the legal procedure essential thereto.

How would you answer this question? Your client is the widow of a man who was a member of a fraternal insurance company, and carried a life policy for \$5,000.00. The company contests the widow's claim on the ground of withheld information in his application, but offers to pay her \$1,500.00. You know

that you can collect the full amount if the case goes to trial, but the widow, who distrusts the machinery of the courts, proposes to sell her claim to you for \$2,500.00. As a matter of professional ethics are you privileged to buy your client's claim for \$2,500.00, which would be \$1,000.00 more than she would re-

ceive from the company if allowed to follow her own judgment in settling the claim? Would such a contract be contrary to public policy?

Students answering the above inquiry will receive data giving cases in point. Address Department "F," Law School Review.

The Study of Law by Cases

A Student's Point of View

By YOUNG B. SMITH, B.S., LL.B.

Columbia University Law School, '12

WHEN Rufus Choate was asked how to begin the study of the law, he suggested a study of Hallam's Middle Ages, Blackstone's Commentaries, and the local statutes. This was the best advice which could be given in 1823, when law schools were experiments and every law student was his own teacher; but the advisability of such a course of preparation to-day must be taken with lots of salt. It may be surprising, but it is a fact, that even now the work in many law schools consists of memorizing passages from Blackstone, and cramming the mind with rules and definitions as they are stated in textbooks.

Is this the best way to begin the study of the law? is a question which every young man who enters the profession must ask himself. Some men have answered this question in the affirmative, and we have the "Text-Book" schools. Other men have answered it in the negative, and we have the "Case System." The former is a product of an old notion of education. The latter was born of a new conception. The old notion of

education was based upon memory. The new conception of education is founded upon understanding. Charles Thaddeus Terry, of the New York Bar, gave us a key to the new theory of education when he wrote:

"The mind is not a receptacle to be crammed with unrelating chunks of information. The purpose of education is to teach the student to think. The power to think does not depend upon memory. What the student will need for his business or professional career is not scraps of knowledge. The possession of a lot of lumber does not make a carpenter. It is ability and skill in the use of tools which make a carpenter. Lumber is obtainable at all times. Skill in the use of tools is the result of handling them."

Professor Langdell had reached similar conclusions when he was placed at the head of the Harvard Law School, and declared:

"The law is a science, and all the available material of that science is contained in printed books. If the law be not a science, it is a species of handicraft, and may best be learned by serving an apprenticeship to one who practices it. If it be a science, it will scarcely be disputed that it is one of the greatest and most difficult of all sciences, and that it needs all the light that the most enlightened seats of learning can throw upon it. If printed books are the ultimate sources of all legal knowledge, if every stu-

dent who would obtain any mastery of the law as a science must resort to these ultimate sources, and if the only assistance which is possible for the learner to receive is such as can be afforded by teachers who have traveled the same road before him, then a university, and a university alone, can afford every possible facility for teaching and learning law."

These two passages set forth the whole inspiration behind this innovation in the teaching of the law, which we call the Case System.

The study of the law from cases is the result of a belief that, since court decisions are the most authoritative evidence of the law, as a science it must be studied in the light of these decisions; that a better understanding of the law can be had by reasoning inductively from decided cases than by reasoning deductively from abstract definitions.

This method of approaching the law I shall discuss in the light of my own experience as a student at the Columbia Law School, and point out as briefly as possible those features which have impressed me as its chief merits.

To begin with, I wish to correct some of the popular notions about the Case System. A Circuit Judge of the United States Court once told me that he didn't believe in "case lawyers," as if that were a knock-out blow to the method of study by cases. By a "case lawyer" I suppose is generally meant a lawyer who has a great memory for the circumstances of cases, but who is unable to extract the underlying principles. The learned jurist was no doubt justified in his contempt for "case lawyers," but such are not the product of the Case System. If the "case lawyer" is the outcome of any system of instruction at all, it is more likely that it is a system which is based upon memory.

The Case System, as I know it, is not a hidebound, stereotyped mode of instruction. It was not designed to do

away with the study of legal principles; its purpose is not to ignore fundamentals, for the mastery of principles, the understanding of fundamentals, are its only aim and end. The changes which it has wrought are changes in methods—not changes in purpose. It is nothing more than a new means to the same end, but one which is more scientific, which is more expedient. Such evolution in methods is not confined to the teaching of law. The physician of fifty years ago sought the same end which the physician seeks to-day, namely, the understanding of the human body; but their methods of study are vastly different. No longer does the student of medicine learn the human anatomy from colored charts; he learns it by dissecting dead bodies. The Case System is the clinical method of learning the law.

A law teacher once told me that at Columbia and Harvard the students do not study Blackstone, and this was to his mind an insuperable objection to the Case System. Undoubtedly the Commentaries of Blackstone is a wonderful work in legal literature, as the dramas of Shakespeare are masterpieces in English literature; but if you attempted to introduce Hamlet or Macbeth into the first grades of the grammar schools, any school teacher would laugh at you, for a child of eight years does not understand the English language. My own observations have been that beginners at law know very little about the legal language.

The principal difference in methods between those schools which start the student with Blackstone and text-books, and those schools which start the student with cases, is that in the former the student begins by defining, without any idea of the things which he is trying to define. In the latter, he begins with the study of the things to be defined, and when he understands those

things, he doesn't need any definitions. Take, for illustration, the first proposition in the law of simple contracts. By the old method the student reads the first few pages in some standard text-book, and commits to memory the statement that a contract is based upon "a meeting of the minds." By the new method the student reads the report of some selected case, and, having obtained the facts, he is required to determine whether there is or is not a "meeting of the minds." Regardless of the side he takes, the instructor takes the opposite side and argues with him, forcing him to be precise in his statements and logical in his reasoning. After one case has been carefully considered, the student states the facts in another case involving the same point, but in which the court reached the opposite conclusion. If the student agreed with the decision in the first case, he is asked to reconcile the two, and at once he is in a quandary. He then states the facts in still another case, and soon it becomes evident to him that the weight of authority leans toward one or the other of the views.

In the discussion of each case the instructor calls attention to the reasons which led the court to its decision, and requires the student to compare these reasons with those which were urged, or might have been urged, by the opposition. Out of this discussion the student finally arrives at a principle of law, namely, that to have a contract there must be a "meeting of the minds"—the same maxim, indeed, which was laid down in the text-book, but, besides learning this rule of law, he has formed some idea of what it means. It is very true that a contract is based upon a meeting of the minds, but whether a given set of facts constitutes a meeting of the minds is quite another question.

The solution of this latter problem depends upon something more than mere memory; it depends upon the power of application, upon an understanding of the rules and definitions, all of which go to prove that the important thing is, not so much the actual knowledge of the rules, maxims, and definitions, but rather a mental training or discipline which constitutes the ability to understand, collate, and deal with them.

The Commentaries of Blackstone, the text-books of legal authors, are valuable acquisitions in their proper place. If the student could comprehend all which they represent by merely reading or memorizing them, we would, indeed, have a short cut to the mastery of the law. But these treatises are summaries of what other men have learned after years spent in the study of cases. When you give a beginner one of these abstract statements, and tell him to grasp it, you are asking him to do in a few hours or days that which great scholars took years to accomplish, and he can't do it. The most that he can do is to memorize, and when he is turned out into practice he has to begin the task of finding out what it means, and likely at the expense of his clients. If in the end the student must go back to the cases, and work out the principles of law for himself, isn't it better to start him on this journey while he is in the law school, and when he can receive the guidance and suggestions of those who have traveled the same regions, and who are familiar with its paths? The value of text-books and commentaries, when properly used, is not questioned. When from a study of the cases the student has once gained a vivid sense of what the difficulties are, he will be eager to turn, and he will turn with profit, to find out what able jurists have said about them, in order to classify and system-

atize his own knowledge. Their words will then fall upon a prepared soil, and will stay in his memory; but to begin with the text-books is to begin at the wrong end.

It is not my purpose to consider every point which has been raised by the advocates of the two methods of study, or attempt to prove that in all cases it is advisable for the law student to attend a school outside of his own state. This is a question which must be answered by each individual in the light of his own judgment. It is submitted, however, that there isn't much difference between the law of Georgia and the law of New York; that the same basic principles which govern the courts of Massachusetts also bind the King's Bench of England; and, therefore, the principal things to be sought by one beginning the study of law are those environments which will assist him most in understanding his work. The importance of having access to a complete law library should not be overlooked. The instruction given by a capable law teacher, the advice and suggestions of an experienced practitioner, the statements of a careful text-writer, are of great value to the student. Their views may be in a high degree clear and accurate, yet the student should bear in mind that neither law teachers, nor practicing lawyers, nor text-writers are the authorized repositories of the law. It is only in the law

library that those repositories are to be found.

In conclusion, I wish to call attention to the intense interest and enthusiasm which exist among the students at the Columbia Law School. For myself I can say that the methods of instruction have made the work a pleasure. But I have been told more than once by those who attended other law schools that, instead of a delightful introduction to this noble science, made attractive by simplicity of method and cleanness of thought, in many law schools the student is set down to the crabbed text of Blackstone, wherein the principles taught can only be retained by mere stress of memory. Under such conditions it is not difficult to account for the common expression, "the dry reading of the law." Properly approached, the law should be the most interesting of all sciences, because the rights and wrongs of men are the subject-matter, and the ascertainment of those rights and the redress of those wrongs are its purpose.

Shakespeare may have put the matter too strongly when he said:

"No profit grows where is no pleasure ta'en;
In brief, sir, study what you most affect."

But it is true, and this truth may serve as my closing argument, that no teacher and no system of teaching can be successful which does not arouse the interest and the enthusiasm of the students.

The Lawyer Before a Jury

By JOHN W. WETZEL

Instructor in Public Speaking, Yale University Law School

THE most successful lawyer must possess the ability to impart his knowledge skillfully and reveal his emotions adequately to impress his personality forcefully. The client seeking counsel must find him able to inspire confidence. The jury must be made to feel that he is honest and sincere in his convictions. The judge must be convinced that he is thoughtful, discriminating, and accurate in his analysis. An academic course in college, a comprehensive knowledge of law, a half dozen degrees attached to one's name, are not alone a sufficient equipment.

The human voice in combination with facial and gestural expression is the interpreter of thought, the revealer of character, the medium of the soul. In this combination there is a psychological power which the most successful lawyers of every age have possessed and which is an indispensable equipment to the most successful lawyers of the future.

The Voice. All thinking contains an element of discrimination, but unless this is made apparent to the jury through the manipulation of the voice that which is often most effective in instructing, convincing, and persuading, is lost.

The lawyer must speak so that he is understood with ease and pleasure. To do this he must not only have a voice that is clear and strong, but he must enunciate and articulate accurately and clearly.

To acquire a strong and flexible voice, practice a few simple exercises regularly for relaxing the muscles of the throat.

(1) Broad "ä" repeated several times

with the mouth opened widely, throat muscles relaxed and using the diaphragm, vigorously contracting it as the vocalization is given.

(2) Ha, ha, ho, ho, repeated several times as above indicated.

(3) Practice vocalizing the vowels in the same manner.

(4) Vocalize vigorously a combination of the consonants with the vowels:

ba,	be,	bi,	bo,	bu,	bol,	bou,
da,	de,	di,	do,	du,	dol,	dou,
ka,	ke,	ki,	ko,	ku,	kol,	kou,
ta,	te,	ti,	to,	tu,	tol,	tou,
la,	le,	li,	lo,	lu,	lol,	lou,
ga,	ge,	gi,	go,	gu,	gol,	gou,

(5) Read aloud selections of conversational oratory or other forms of literature for half an hour each day. Begin in a very natural conversational range of voice and increase the resonance and loudness by degrees, with great care not to strain the voice.

To improve in enunciation and articulation practice daily on the phonetic values of vowels and consonants until their correct values may be given with ease and accuracy. Practice reading aloud as above indicated, with the greatest care to pronounce each syllable and word so distinctly in the conversational range of voice that they may be heard with ease in every part of the room.

Good articulation is of first importance in making the speaker easily heard. This requires the elements of words to be issued from the mouth, accurately impressed, perfectly finished, and of the proper weight and value. Acquiring the habit of putting oneself fully into the elements of words is one of the most

effective means of getting back of what is said in such a manner as to be interesting, convincing and persuasive.

A very common fault is speaking too loud. If the above suggestions are put into practice, disagreeably loud speaking is absolutely unnecessary in order to be heard perfectly in any sized room. The effort to make oneself heard, by force and loudness of voice alone, is certain to cause the pitch to be too high and the quality of the voice very unpleasant. Here lies the most fundamental cause of unnaturalness, artificiality, and monotony in speaking. The declaimer and the rant-er always speak in a pitch which is above the heads of the audience. He speaks at his audience, not to them. He leaves the impression of affectation and bombast.

The most agreeable and pleasing voice is always found in the various modulations of the conversational range. The speaker must learn to know and hear his voice in this range and then modulate it according to the size of the room, the number of those addressed, and the degree of earnestness required to adequately express and impress his thoughts and feelings.

Speak to a jury as you would to an individual whom you wished to interest, instruct, convince, and persuade. This requires interesting narration, clear and definite statement, salient and logical argument, earnest and soulful appeal. These are found in the conversational range of voice where the real personality of the speaker is made most manifest. Here is found an unwritten and almost indefinable language of the voice combined with those natural characteristics of expressive conversation which make the most successful speaking a tremendous psychological power. These are:

(1) Pause, which gives opportunity for the reception of an idea and which

restrains the speaker from speaking too rapidly.

(2) Touch, which indicates where the mind of the speaker is concentrated, and which concentrates the mind of the judge and the jury upon the central point of a clause or sentence.

(3) Change of Pitch, which discriminates idea from idea; which holds attention by introducing variation in the presentation of ideas; and which aids in making each idea as specific as possible.

(4) Inflection, which shows the relation of one idea to another, or the attitude of the speaker towards his ideas, his purpose, or his audience; which reveals a methodic action of the mind leading through many ideas and thoughts to some specific end; which relates every word spoken to the central thought and sustains attention upon the main idea until it is made logically salient.

(5) Tone Color, which indicates feeling. It is the language of imagination, sympathy, tenderness, disdain, irony, sarcasm. It is an unwritten and indefinable eloquence.

(6) Movement, which indicates the estimation of the value the speaker lays upon what he says. The point of view, change in feeling or experience, character, and attitude of mind, are all indicated by various degrees of movement, governed by the rhythmic pulsations of the mind, in thinking.

By careful observing to make use of these fundamental characteristics of good conversational speaking, the common faults of vocalization usually apparent in the address to the jury will be largely eliminated. Then the other elements of a good delivery, gesture and facial expression, will also be acquired much more naturally and easily.

Special attention however should be given to these important means of emphasis and interpretation. Cicero says:

"A speech is well delivered when the vocal expression, the facial expression and the gestural expression are in harmony with the sentiment uttered and in harmony with each other."

Rufus Choate, by following this instruction throughout his life in almost daily practice upon some form of literature, developed into the most expressive and effective jurist America has ever produced.

Gesture does not only mean the manipulation of the arms and hands, but the movement of the body in general from the moment the lawyer appears before the jury until he has finished his speech. Every physical attitude is consciously or unconsciously impressing the judge and the jury, favorably or unfavorably, through their visual sense. The lawyer should conduct himself with such dignity and self-control as to inspire confidence and respect. Carelessness and slovenliness in walking or standing before the jury may be sufficient cause for failure to win a case.

If the speaker is nervous, as is frequently the case with a young lawyer, he must control this by mentally and willfully insisting that it shall not assert itself by vitalizing his legs, arms and hands, or the muscles of his throat. By exertion of will power this nervousness or fear may be concentrated in the center of the body. The chest will very likely expand under this pressure and the taking of a deep breath, the heart may beat a little faster for a while, but the general bearing of the speaker will indicate self-control. He will have the assurance of mastering himself and this will greatly aid him in mastering his case and his jury. This control of fear and nervousness is absolutely necessary to an easy and forceful manipulation of the arms and hands in gesture.

Gesture. Generally speaking the ges-

tures of the hands in forensic delivery are as follows:

(1) The Gesture of Attention. The right hand is brought by a movement of the arm from the shoulder to a definite position which reveals the palm of the hand to the jury at the instant the word is vocally emphasized which is the center of attention.

(2) The Gesture of Assertion. From the position of the hand at the conclusion of the gesture of attention, the hand is gradually raised during the utterance of the less important words until the thought center word is emphasized when the hand is brought down with a full arm movement definitely upon the accented syllable of this word with the hand open so as to reveal the palm, the most expressive feature of it, to the jury. These two gestures are usually given together and when accompanied, as they should be, by a concentration of the speaker's eyes and vocalization upon those to whom he is addressing his remarks, result in such a correlation of the elements of expression as to produce a powerful psychological effect in impressing his thought and feeling upon them.

(3) The Gesture of Reference. This may be definite or indefinite. In the gesture of definite reference the eyes should follow the hand as it reaches the thought center. In the gesture of indefinite reference the eyes should not follow the hand to the thought center. In these gestures the hand is raised by a full arm movement during the utterance of the less important words to a position about on a level with the shoulder and in the direction of the thing referred to until the thought center word is vocalized, when the hand is allowed to fall upon it with palm open towards those he is addressing.

(4) The Gesture of Negation. The

hand is raised by a full arm movement with the palm down and in the opposite direction from the thing referred to during the utterance of the less important words until the thought center word of negation is reached, when it is brought to a definite position with the palm down or out towards that to which the speaker is referring.

(5) The Gesture of Generalization. In this gesture both hands may be used. They are brought to position during the utterance of the less important words by a movement from the shoulders, which brings the hands to the emphasized word or thought center simultaneously, with the palms open towards those to whom

the remarks are addressed. The hands should reach their definite position at a point about forty-five degrees below the shoulders and about forty-five degrees to the right and left.

Every lawyer who desires to be most effective before a jury or an audience should persistently practice these simple fundamental gestures with great care and discrimination, until they are thoroughly mastered. If he would be most successful he must instruct and convince and persuade, by that harmonious combination of the elements of expression, which appeals psychologically to the minds and hearts of the jury through their ears and eyes.

Letters from a Lawyer to His Son

By *ARTHUR M. HARRIS*
Of the Seattle Bar

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[A condensation and compilation of letters from a lawyer to his son who is about to enter upon the practice of the law. The salutations and matters of private interest are eliminated. Final Installment. The entire collection of letters has now been published in book form.]

Letter XIV

NOTHING much more annoys me than to see careless and disrespectful manners in the courtroom. To me, the administration of justice seems more sacred than profane. Outside of his religious worship, man in his courts of law, in the honest attempt to do justice, becomes God's minister; for God is justice, and the divine attribute is manifested in the just laws of a modern state as really as they were in the ten fundamental commands of the Mosaic law. Regarded in this light, what dignity and responsibility rest upon the judge! What a noble and worthy duty is the jury's! How solemn a place the courtroom becomes, where all men, regardless of creed or race, may resort for the amelioration of their wrongs and the enforcement of their rights! With what seriousness should our lawmakers inscribe the new and necessary statutes upon the book of laws!

Nothing frivolous or trifling should be permitted in the courtroom. How truly they understood the dignity and significance of court procedure who first made use of the term "contempt of court"! Men may be and are frequently contemptuous in the presence of a sovereign or ruler; but there is no punishment for

such contempt. A man is contemptuous of his fellowmen; on the street, in the market, in his private relations; even of his parents and his family; yet there is no statutory punishment until his foolish conduct shames the dignity of the place of law or the recognized temple of religion. There are three generations of lawyers behind you, my boy, and it is my pride and pleasure to be able to say that not one of them ever incurred the punishment for contempt of court. In the conduct of a case, your patience and temper will be severely tried. You will see falsehood and deceit gaining over your just cause; the opposing counsel will maliciously pervert the facts and distort the law; he may even turn upon you personally with vile insult or biting sneer; but I hope and pray that your temper may not betray you into descending to similar methods in reply.

Your grandfather's carriage in the courtroom was perfect. He was a great lover of his cigar, yet he would not enter a courtroom, even during the adjournment of court, with a cigar in his mouth or in his hand. I never saw him at any time in a courtroom with his hat on. The sight of a lawyer at the bar, during the conduct of a case, with cheeks bulging with chewing tobacco and

pausing in his remarks to the judge to spit a copious stream of black juice from his mouth, caused your grandfather unutterable disgust. I have seen the bailiffs reading newspapers; lawyers lolling over two or three chairs, yawning and gaping; even the judge tilted back, half dozing in his chair; yet your grandfather always entered the room and took his seat with a quiet dignity and an attitude that spoke eloquently of his respect for his profession and for the court. I have heard him say frequently that he could not enter the courtroom without a peculiar feeling that the great and sovereign state itself was present in the room. To him all the toilers in the fields, the mines, the shops, seemed present in spirit; they had set that place apart as their altar of justice; they had deputed their servants to administer their laws there. Quixotic or not, that sense of the immediacy of all the people of our great state made your grandfather a marked man in court, and touched every word he said with sublimity and meaning.

It is an intolerable thing that a gaping rabble should be admitted to the trial of the so-called sensational cases. Creatures of that kind are to us what the lovers of the gladiatorial arena were to the ancient Romans. They come into the courtroom sniffing for blood, and hoping to be amused and regaled by the tears and woes of hapless sufferers. How they lick their foul muzzles when some shrinking woman tells of her ruin and abandonment, or an aged parent confesses the disgrace of his only son! The courts must be open to the public, yet it is a shame and a pity that such a right should be abused by a lot of curious spectators, whose conduct and presence confuse the witnesses, frequently bias the jurors' minds, and destroy the whole solemnity and dignity of a judicial proceeding.

There is no apparent remedy for this, yet it becomes more than ever the imperative duty of every lawyer present to so comport himself with becoming gravity and due regard to the proceedings as to rebuke and correct the attitude of the careless and thoughtless spectators.

Letter XV

THERE is no fixed scale of fees for lawyers. In some places the people have been trained to pay more for their legal advice than in others. This is particularly true of pioneer places. What you may charge \$100 for in an Alaskan mining town, you may have to do for \$25 on the Pacific coast and \$10 back in Pennsylvania.

While I do not like to regard the profession of law as a business merely, I am compelled to admit that the laws of supply and demand govern prices in that sphere of activity as well as in selling shoes or overcoats. The little village in Pennsylvania will have its full quota of lawyers, while in an Alaskan mining camp the lawyer will find himself for once a rare bird, and a gentleman whose services are much sought. With the later settling down of the mining town, however, and the influx of business and professional men, prices of all things, merchandise and professional services alike, will of course sag.

In determining the amount of your fees, you must generally be governed by the prevailing amounts charged. There are exceptional men, who can come into a small-pay community and demand and receive their own scale of prices. To do that successfully you must be an able and experienced lawyer. If you charge \$20 more than your neighbor does, you must be prepared to render so much more value than he does.

Remember that absolutely reliable and honest legal advice, the advice upon which a man may act immediately and

safely, is hard to obtain, even in a community where there are many lawyers, and the man who renders such advice will soon find himself in a position to charge almost what he pleases. You may hear men say that Brown will charge them \$25 for a matter Jones will handle for \$5; but then they know that Brown will secure their rights, and, if there are any complications, he will more than earn the extra amount paid.

Of course, in your pleadings you may petition the court for almost any amount, knowing pretty well that it is almost sure to be reduced. If you think you are entitled to all that you ask for, and expect to make a fight to secure it, you must come into court prepared to offer evidence of the reasonableness of the fee asked for.

In this connection, I am reminded of a case I once had in which I desired to oppose the granting of the amount of attorney's fee counsel for the opposite side was praying for. A promissory note was being sued upon against my client, and, while we had no defense to the action, I considered that the fee asked for in the complaint was most unreasonable. The note provided for a reasonable amount as attorney's fee in case of collection, rather than a stated sum. Court opened at 1:30 in the afternoon; but, as this was a small matter, we agreed that it should be heard by the judge at 1 o'clock.

I was an inexperienced youngster in those days, and drifted into court with a few nicely worded phrases on the injustice of fining my client so exorbitant a sum for collection. I noticed at that time that there were two or three lawyers hanging around the courtroom, and, if I had been thoroughly awake, I should have known that no business of their own brought them to court half an hour before its opening. I soon found

out what their functions were. As soon as I entered my more or less forcible objection to the fee, counsel suggested that the court advise himself what the prevailing custom was in that jurisdiction by consulting the attorneys in the room.

We had a visiting judge, and he was glad of that method of determining the question. Even then I did not catch on, but thought these wandering lawyers were all disinterested. I did not think so when every mother's son of them swore emphatically that my opponent's demands were extremely reasonable, and that they always got that much themselves, and one of them ingenuously volunteered the information that he once obtained a \$50 attorney's fee on a \$300 note. Of course, I should have asked that the matter be continued, when it was proposed to take testimony, so that I might have a chance to get some help for my side of the question; but, like the good things you might have said in your after-dinner speech, it did not occur to me until it was too late. I mention this, so that you will not go into court unarmed to ask for or oppose an attorney's fee.

There is not much danger of overcharging a client. You have to wait long enough for the average fee to warrant you sticking a little on at the end for interest.

The young lawyer is doomed to do a lot of what might be called charity work. The shady case, that has been on a continuous circuit of law offices for the past ten years, will certainly drift into your hands soon after you are established. People will rush to you for advice, and you, scenting some paying litigation, will open your heart and your lips, only to receive their promises of bringing the matter to you if it develops into a case. If it ever does become a

cause of action, you will see it listed in the court bulletin under the name of some older and more pretentious lawyer than yourself.

Of course, all your friends will have to be taken care of for old time's sake. This would not be so bad, if, when they got a real case, they would bring it into your office, instead of giving it to an older and better known attorney. They will graft the small things of the law off you, but they won't trust you when it comes to real money. Human nature, and the same spirit that sends the sick man to some gray-headed old fraud, rather than a bright and capable youngster!

In the days when there were fewer lawyers than there are now, the contingent fee was not regarded as strictly proper. To-day you will simply have to accept cases upon the contingent fee basis, because there are too many lawyers who will, if you won't. The contingent fee has become a habit with the litigating public, and they claim it as if it were almost a right. It has this in its favor, however, that when you do win such a case, you usually get a whole lot more money than your services were actually worth. Then, again, in many cases it is a matter of necessity. The poor client may not have a cent, and may have a perfectly righteous cause. It is your duty to prosecute that man's suit, and it is also your duty to do so without plundering him if you win.

One thing you should do wherever possible. Get the necessary filing fees and immediate costs from a client. Train them to put up enough to file the complaint with the county clerk. They will not be so likely to run off and take their case to another man; and, furthermore, you would soon become bankrupt if you tied up all your ready money in advanced fees for your clients.

Letter XVI

DO NOT think, because you are in what is known as a "code" state, that you can be slipshod and careless in the matter of your pleadings with impunity.

I have had considerable experience with what is known as the common-law pleadings and also the code pleadings, and I am satisfied that the code system or method is superior to the old. Many of the old-time lawyers are devotees of the old-style pleadings. That is natural, and is just the attitude of all human nature towards the new thing which experience and antiquity have not yet authorized.

Code pleading is the child of common-law pleading, and to properly use and understand the child you must be first well grounded in the knowledge of the parent. For this reason I think that your Dean does well in training the men carefully in the forms and practices of the old pleadings.

We owe code pleading to the English lawyers, who, of course, more than any others, were grounded in the old forms. The modern method is a splendid refutation of the charge that lawyers themselves are not progressive, and will only act when the lay pressure becomes too strong for them to resist.

The common law tended to make a man an exact pleader. The trouble was that it penalized a client for the mistake of his lawyer. When the lawyer started to prepare his case, he had first very carefully to select the form of his case. It seems there was what you might call a jacket or envelope for all the known actions, and to stick a cause into the wrong jacket was to be thrown out of court. So the lawyer would very carefully dress his case up and bring it anxiously into court.

Immediately it would be subject to

close scrutiny. The opposing lawyer would go over it, aided and abetted by an intelligent court, and if a button was found missing, or the cause had on the wrong-colored coat, or the trousers were too short, there was a great halloo and hurrah, and the poor cause of action was summarily evicted. It was sent back to the legal tailor, who altered a garment here and there and once more anxiously brought it forth for inspection. And so the process would be repeated over an interminable time, until finally all the formalities were complied with. The tailoring was found perfect, and the issue itself finally began to receive a tardy consideration.

The Code abolishes these ancient and iron-clad forms, and requires that you state every cause of action in plain, simple, and concise language. This is as it should be. But, in the seeming laxity and easiness of such pleading, the lawyer is often entrapped into loose methods of pleading, which will defeat his cause as surely as if under the old system he had pleaded the wrong form.

The modern pleading frequently brings a complaint into court smothered in verbiage, clogged and cloaked with matters of evidence, conclusions of law, and general remarks of perhaps general literary interest, but certainly out of place in a pleading at law, very much suggestive of an over-dressed and over-ornamented woman. Then follows a still hunt for the issue, which is known to be lurking somewhere in the depths of that literary foliage.

Everybody joins in the search. Opposing counsel sits up nights, rummaging through the mess, hoping that some lucky flash of insight will reveal the real trouble. The judge takes it into his chambers, patient man that he is, and pores and ponders over it till the gray shades of morning filter through the

blinds. The original pleader meanwhile sleeps the sleep of the just, feeling that he has done his whole duty, and is a much aggrieved individual when the court finally sustains the motion of his opponent to make the complaint more definite and certain.

This is all wrong. The pleader should let his issue come before the court like a maiden, modestly and sufficiently clad with necessary allegations to enable her to face a crowded court without blushing and without fearing the critical inspection of her enemies.

The good pleader is a craftsman of the first class. How he loves to chisel each sentence! How he likes to fit each word into a perfect groove, until he has built a simple, but substantial, casket for his cause. Not a word misplaced; not a line of unnecessary matter. A perfect pleading makes good reading matter for even a layman, and fills the lawyer with admiration for the skill and craft which he can discern therein revealed.

When you see a mussy, sloppy paper, full of typographical errors, and miserable third-rate typewriting work, you may feel pretty sure that there is a forest of verbiage and a whole lot of unskillful pleading accompanying it.

Labor at your typewriter, if you cannot afford a stenographer, until you can make a decent paper. Do not sign your name to a pleading that is not as nearly perfectly typewritten as you can get it. Remember it is your representative in a peculiar way.

The workman speaks through his work, and your work will from time to time come into the hands of prominent and successful lawyers, and will also be closely scanned by learned and distinguished judges, not to mention the host of smaller fry, such as clerks and so forth, through whose hands each pleading must pass. There is a personality

even in the mechanical work of the pleadings, and an experienced clerk can tell by merely looking at the form of a complaint from which law office it has come.

I have known lawyers careless in person and manners, yet who would rewrite a whole typewritten page of pleading if by chance they made one small error in the writing. There is a suggestion of superiority in a good, clean, correct page that never fails to impress the counsel upon whom it is served. On the other hand, the lawyer who receives a dirty, carelessly written sheet, feels somehow that he is going to meet a third-rate lawyer in combat, and adjusts his mental attitude accordingly.

Of course, he is frequently mistaken

in this; but it is an example of that peculiar psychological fact that we are impressed unfavorably by a carelessly or sloppily dressed man, and favorably impressed by a very inferior man who is well and neatly attired.

Let all your stationery be neat. A good plan is to have your letter head, your corner card on your envelopes, and your business card of a uniform type and style of printing. Have the printer show you his samples in this line, and do not be ashamed to imitate the style of a first-class lawyer, when it appears to be the perfection of neatness. These all are little things; but life is composed of small matters, and proper attention to the lesser insures success and satisfaction in the greater.

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An Intercollegiate Law Journal

A. F. MASON, Editor

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No. 6

A Study of Legal Education

By HENRY S. PRITCHETT

President Carnegie Foundation for the Advancement of Teaching

IN FEBRUARY of the present year the American Bar Association's Committee on Legal Education and Admissions to the Bar addressed the following letter to the President of the Carnegie Foundation for the Advancement of Teaching:

"This communication is addressed to you by the American Bar Association's Committee on Legal Education and Admissions to the Bar, and has attached to it the signature of each member of the Committee.

"The Committee was greatly impressed by the investigations made a few years ago under your direction by the Carnegie Foundation into the conditions under which medical education is carried on in the United States. That the medical profession and the entire country was placed under lasting obligation to your organization because of the service that was then rendered is acknowledged by all who know the facts.

"The Committee of the Bar Associa-

tion is most anxious to have a similar investigation made by the Carnegie Foundation into the conditions under which the work of legal education is carried on in this country. There is an imperative need for such an investigation, equally searching and far-reaching, with the other, and one equally frank and fearless in its statement of the facts which the investigation may reveal.

"It is to be hoped that, if your organization decides to adopt the suggestion the Committee makes, your investigation will not be confined to the law schools, but may be extended to the matter of admission to the bar in the various states of the United States, with a view of making known to the entire country the facts relating to this important subject.

"This Committee has not at its disposal either the funds or the time needed for the comprehensive investigation that is so much to be desired, and it appeals to you, therefore, to undertake the task,

and assures you of its readiness to co-operate with you so far as possible, should you conclude to comply with this request."

In accordance with this request the Carnegie Foundation has undertaken to make such a study. The work will be carried out partly under the immediate direction of a member of the staff of the Foundation, but with the assistance of various persons who may be chosen in different parts of the country to deal with matters of their own section—for example, such as the methods of admission to the bar, bar examinations, the administration of the state regulations, and other matters.

It is intended that the study shall cover, not only the examination of all the law schools of the country, of the various curriculums of study, and of their libraries and facilities for teaching; but it is the hope, also, of the Foundation to carry the study somewhat further, and to bring under consideration the relation of the legal profession to the administration of the law and to the obligations of the social régime. Some effort will be made to trace the evolution of the legal profession in the United States and its relation to legislation and administration, of the effect of corporation practice upon the profession, and of the relation of the number of lawyers to the amount of litigation and the cost of the legal process.

This study will be made from the point of view which the Foundation has occupied in education throughout, namely, that such professions as those of law and medicine are in fact quasi public, that they carry with them certain privileges, and that society has the right, therefore, to impose such conditions upon candidates for entrance to these professions as will secure to society the

most efficient body of practitioners. The Foundation has, in the studies which it has made, committed itself to the point of view that society has the right to impose such conditions as are reasonable upon those who desire to enter these professions, and that such reasonable conditions make not only for better service and improved social conditions, but make also for a more attractive and fruitful career on the part of those who take up these quasi public professions.

One of the questions which has been much discussed in the teaching of law during the last twenty years has been the so-called case system, and the various imitations and modifications of the case system which have arisen. It is quite likely that some European legal scholar of high standing will be asked to make a study of this phase of American legal education, and to give an estimate from the standpoint of comparative teaching of the progress which has been made in adapting the case system to the practical teaching of law.

In undertaking this study the Foundation desires to make clear its desire to deal with the questions affected impartially and fairly, to approach each school of law and the study of each curriculum in the most friendly and open spirit, and it asks the co-operation of every law school and of every teacher of law, without regard to the amount of endowment or the number of students which it may have, in making the study a fruitful and constructive one for American education in the law. It is only by such co-operation that the teaching of law can be made to minister in the end to the improvement of the quality of lawyers and of the administration of the law itself.

Admission to the Bar

By ALBERT H. PUTNEY

Dean of the Webster College of Law

THE question as to what rules shall govern the right of admission to the bar in the different states is one of great interest and importance, both to lawyers and to the general public.

No one to-day denies the necessity of maintaining a high standard of admission, or fails to see the evils which result to the community from a multitude of incompetent lawyers.

As to how the standard shall be maintained, however, there is no such unanimity of opinion. While all shades of opinions on this question are to be found, the whole controversy to-day, in this country, in reality resolves itself into a single issue: Shall admission to the bar be restricted and regulated by *monopoly or by competition?*

In connection with this main question there is the auxiliary one: Shall restrictions placed upon admission to the bar be extended so as to restrict the right to study law?

It is not the purpose of this article to indulge in any adverse criticisms; but, nevertheless, all those who truly favor the raising of the standards both of the legal profession and of American citizenship cannot help regretting the attitude which has been taken by some of the leaders in legal education in this country. It is unfortunate that the personal equation should have become so prominent, and that a question of such vital and widespread importance should have been so largely considered and discussed from the standpoint of its effect upon certain schools.

The idea of a monopoly, either complete or partial, is not one which will find much favor to-day in the minds of the American public. Of all monopolies, perhaps the most indefensible, and the one most disastrous in its results, is the intellectual one. It is only necessary to turn to history to note the intellectual stagnation caused by any scientific, religious, or educational monopoly.

An attempt to restrict or regulate admission to the bar by limiting the number of schools permitted to teach law, or by providing that instruction in law shall be given only by certain methods, or at certain hours of the day, or to certain classes of students, will not raise the standard either of law schools or of the members of the bar. The restrictions of this kind, which above all others should be avoided, are those which would tend to make it impossible, or at least unfairly difficult, for any one to obtain admission to the bar on account of his lack of financial resources.

It must also be remembered that it is very far from being the sole scope or duty of the law schools to prepare men for admission to the bar. An ever-increasing number of students are to-day seeking a knowledge of the law for use in business, in public life, or merely as a part of a liberal education. While admission to the bar should be strictly regulated the mere study of the law should be left entirely free and unfettered. As long as it is a maxim of our law that "ignorance of the law excuses

no one," it is the height of absurdity and injustice to prohibit any one from studying this science.

Nor is there much merit in the argument that those who desire to study law without any idea of practicing should study the law apart from those who study it as their life profession. The greatest defect in the education of law students, who come from the leading law schools of the country, is their lack of practical knowledge both of the law and of the business world, and the opportunity of meeting in their classes a number of more mature and more practical, though less educated, students would be beneficial rather than harmful to the future lawyer.

The elimination of the plan of restricting the teaching of the law as a practical method of raising the standard of the bar raises the question as to what plan can be adopted for the accomplishment of this end. The answer is a plan which, although a radical innovation in America, has been adopted to some extent in other countries, namely, that of *competitive examinations* for admission to the bar.

At present competition is simply postponed until after the candidate is admitted to practice. It then operates at the expense of the public. The inefficient lawyer struggles to hold his own in competition with others, and either falls by the wayside or develops into the pettifogger or shyster.

No one can deny the evil effects of too great a number of lawyers, both upon the lawyers themselves and upon the general public; nor can any one question the right of any state to limit the number of licenses which shall be granted to lawyers. The authority to practice law is in no sense an inherent right, but is a special privilege granted

to each lawyer by the state; and the public welfare should be the supreme test as to the number of applicants to whom such authority should be granted. An attorney being an officer of the court, and standing in the position of a public quasi official, applicants for such positions may with propriety be compelled to reach this position by the same method required by candidates for positions in the civil service.

It will undoubtedly be urged by many that bar examinations have not proved very accurate tests as to the fitness of candidates for admission to the bar. This has unfortunately been true to some extent in the past; but the trouble has been with the kind of examinations given, and not with possibility of proper examinations determining such ability.

The bar examinations given in nearly all of the states to-day are extremely defective, both as to the theory and philosophy of the law and as to the practice of the law. A bar examination can be prepared which would serve as a satisfactory test along both lines of the applicant's qualifications for admission to the bar. Such an examination should start with an examination upon legal history and the general theory of jurisprudence, and end with work in actually drawing pleading, deeds, and other legal papers, and in explaining the actual steps of conducting a suit at law.

A proper competitive examination for admission to the bar would reduce the necessity for red tape as to the admission of candidates to take examinations to a minimum.

There are many details in such a plan of bar examinations which it would be necessary to work out. In particular, the question as to how many new lawyers should be admitted each year in

every state would have to be carefully considered. It is needless to say that the success of competitive examinations for admission to the bar would demand absolute fairness in the conducting of such examinations.

The examinations could and should be so conducted as to provide a good competitive test between law schools as well as between students. The real test

of the merits of a law school is what it is able to teach to its students; and the publication of the exact mark obtained by every applicant for admission to the bar, together with a statement of the school at which he studied, would provide the most efficient and the fairest method of eliminating any law school which was not doing creditable work.

Moot Courts as a Part of a Law School Curriculum

*By HON. GAVIN W. CRAIG, LL.M.
Judge Superior Court, Los Angeles, Cal.*

IT WAS my misfortune to have been unable to attend the last meeting of the Association of American Law Schools. However, I was much interested in reading the report of the paper read and the discussion which followed for and against the plan of making moot courts a part of regular law school work. I am especially pleased to be given this opportunity to express my ideas upon this subject through the American Law School Review.

As some one has well said, there is a vast difference between the knowledge of the man who knows about a thing and that of the one who knows the thing itself.

In the first place, it is significant that, of the speakers who expressed themselves upon this subject, no one who had ever had actual experience in conducting a moot court as a part of the regular school curriculum opposed its being continued in some form. The only objectors were those who may know something about a practice court, but who ad-

mittedly have no knowledge of the thing itself.

It seems a little strange that, in the consideration of this matter, the rights of the public seem not to be given the slightest consideration. It was said by one speaker that the man who goes out of school without knowing anything about practice "will learn through application and industry." Without doubt the dental student if taught only the theory of his profession, and not having ever seen a tooth filled or a crown put on, in time and if given sufficient opportunity will learn "through application and industry." This, however, would depend a great deal on the self-restraint of his patients. The public, men accused of crime whose liberty and perhaps whose lives may be lost through the blunders of some one holding a license to practice law, and those whose all has been invested in property the title to which is in litigation, or whose money has been placed in the hands of some unscrupulous faker, these and persons in a thou-

sand situations of similar difficulty are primarily the ones whose interests the law should seek to protect. Are their property, liberty, and lives to be regarded by society as of no greater moment than to serve as an agency to school young attorneys whom the law colleges in graduating have assured the world are competent to practice law. You may say that people should go to older attorneys. It is not a question of age. The law schools are graduating men whose ages range from twenty-one to sixty; moreover, the man who spends three or more years under instructors who constantly belittle the importance of the knowledge of the manner in which to conduct a case are so imbued with the idea that all they need is to know their client's rights that it takes them years to awake from their childlike slumber and realize their helplessness. The infant who has yet to learn the use of his feet in moving from place to place will not be comforted or benefited noticeably by being shown his bottle across the room. He knows the bottle is his. He has all the means necessary to possess it except practical knowledge, and the infant attorney may know that his client has a clear and unquestioned right which has been grossly violated, but it will avail him little unless he understands the legal steps necessary to secure and protect them, and how such steps may be taken, and this involves much more than a theoretical knowledge of practice and the rules of evidence.

But a short time ago a lawyer who about a year and a half before had graduated from a leading law school, which has no practice court, entered the trial of a case in my department of the Superior Court on an answer whose denials were in the conjunctive upon every material allegation. His opponent moved for judgment on the pleadings. Un-

der the Code of California great liberty of amendment is allowed, and, being reluctant to enter judgment for several hundred dollars against a man who might have a meritorious defense, I informed defendant's counsel that, as he did not seem to know that an amendment might be allowed, I would offer him that privilege, subject of course to his paying plaintiff's costs upon the continuance. He haughtily assured me that he preferred to submit his answer to the Appellate Court; yet who can say that this product of a school without a moot court will not "learn through application and industry." No one expects young men just out of school to be highly skilled in pleading or in evidence; but for the sake of their clients, if not for their own welfare, give them sufficient instruction so that well disposed judges will not be precluded from protecting those who place business in their hands without opportunity to know of their inexperience and lack of training. It is the business of the law school to teach men how to practice law. They can learn in a business college the proper forms of deeds, leases, and notary's certificates; but I assert that without a knowledge, not merely of the theory of jurisprudence and substantive law, but of the rules of evidence and procedure, a man cannot be even a safe business lawyer; cannot draw a contract of intricacy, or a will with numerous bequests and conditions, or many other instruments used in modern transactions. It requires an attorney who knows how these instruments may be attacked and defended in court to draw them in such form that they will stand. It is true that there are many of our safest attorneys who are seldom seen in court, but with few exceptions they have served their time in active practice at the bar.

Moot courts are not only a proper, but

they are an essential, part of every complete law school course. So far as I have been able to learn, no college has devised any other system of instruction which does more than scratch the surface of the field which the practice court thoroughly cultivates, and it is one which if left untilled produces such a crop of legal weeds and thorns as in many cases to pretty well obscure the fruit of schooling in the substantive law around it.

Those who advocate the moot court claim credit for it chiefly because it teaches the student practice and it makes real the theory which he has learned in a course in pleading. I agree that these things are sufficient to justify any school in maintaining a moot court. Those law colleges advertising in their year books and catalogues, among other courses, one in procedure, convey the idea to the inquiring prospective student that he is to really learn something about actual practice; and yet if such schools maintain no moot court, and do not in fact conduct their classes in procedure as such a court (which some do), they are securing the money, and what is more important the time, of many under false pretenses, for such a class, in so far as providing instruction in genuine practice is concerned, is a farce, and I am convinced from my experience of six years as secretary of one of the larger of the law schools in this country, where I did the enrolling of the students, that the majority of them are controlled in deciding upon what school to enter by the representations made as to the practical courses, such as those of procedure, pleading, evidence, and moot court drill.

If we say that the law schools should not teach any practice, but that such instruction should be left to the office, we concede that the graduates of our colleges are not prepared to enter the legal profession, but must first serve an ap-

prenticeship of one or two years under the supervision of some attorney who will instruct them in the real practice of law. We thus class law schools as mere kindergartens to amuse the youth for a time and incidentally furnish him the A, B, C's of law, so that in his more advanced course in an office he will know what some attorneys means when he uses certain terms and expressions. It is a matter of humiliation to find it necessary to admit that this is about the position which many law schools have occupied in the past. I have taken the trouble to secure estimates from those who are in a position to know, in many states, as to the relative number of persons admitted to the bar who have studied in offices and those who have attended law schools, and in almost every case I am informed that from 40 to 75 per cent. are still receiving their legal education in the office. This one fact is a demonstration that there is something radically deficient in our law schools, and that that inadequacy is in the lack of instruction in the practical branches. In many cases the failure to enter a law college is due, not to the ignorance of the would-be lawyer, but to his wisdom gained from the advice of practicing attorneys who have graduated from or attended law schools of high standing. If we were back in the good old days when the lawyer set aside a certain time of each week or day for instructing his apprentice, or explaining the details of the legal business and procedure of the office to him, it is doubtful if any one could devise a better means of learning, but under present conditions no lawyer who is worth while has time to coach the student in his office. In the large cities young men work in offices to secure practical instruction, and attend law school at night, or from 8 to 9:30 a. m., and 5 to 6:30 p. m., for a knowledge of substantive

law. In many instances this is a satisfactory arrangement, but it should not be necessary, and it would not be usual if the schools would do their full duty.

The guide who takes you halfway over a mountain trail and then stops, the legislator who introduces a meritorious bill demanded by his constituents and leaves it in committee, and the law school which teaches its students what contracts are legal and which may be rescinded, but not how to draw a binding contract, or the legal process of rescinding an inequitable one, are each first-class examples of those who have but half performed their duty.

But I would go much farther than those who advocate the use of the moot court to teach practice and to illustrate and make real the instruction in pleading. From eight years of actual experience in the operation of these courts, I maintain that their greatest use is to induct into the mind of the student a real appreciation and intuitive knowledge of the rules of evidence and of the methods of conducting a case. Let me say right here that I do not expect instructors in law who have not engaged in active practice to agree with me in this proposition. They usually have progressed just far enough as attorneys to be thoroughly convinced that they have learned all there is to know about law, and have they not acquired this vast knowledge and skill without the aid of practice courts? In so far as having a real understanding of what it is to be a lawyer is concerned, they are like the man who looks at Mars through a telescope. On this branch of the subject I must therefore address myself to lawyers, students, and prospective students.

If there is some reason, at least in theory, for the argument that the young lawyer has time to get up his pleadings in passable form even though he has re-

ceived but little instruction in law school in that branch, this argument against the necessity of moot courts (and it is the only one entitled to be considered against them) has no application to the use of the moot court as a means of instruction in the trial of a case. The attorney has no time to look up authorities before making an objection to a question propounded by counsel on the other side. If he even stops to ponder he is too late and the trial judge will seldom grant his motion to strike out, for it is elementary that an attorney will not be permitted to wait until he hears an answer, and then if it does not suit his purpose expunge it from the record, even though an objection might have been sustained before the reply was given. Methods of impeachment, the ability to distinguish between conclusions of the witnesses and probative facts, the art of weaving into the record seemingly irrelevant incidents, in these and a dozen other particulars the attorney must have experience. He gets the material and nothing more from the study of text and case books. Many a meritorious case is lost because of a lack of knowledge of the rudiments of advocacy. The law student can and should be required to acquire this elementary information and experience in practice courts and not by successive defeats experimenting with real cases, existing rights, and human liberty and life.

Among the rules of the moot court, which the writer organized about eight years ago in the University of Southern California College of Law, is a statement prepared about that time, and which, without material change, we still use. It explains the most essential feature of a successful moot court trial. It reads as follows:

"The following statement is made for those who do not fully understand the use of the Statement of Facts:

"There is in every *actual case* a true statement of facts. Pleadings are filed and witnesses put upon the stand to prove this true statement of facts, and the whole object of every action is to discover it.

"However, in the argument of demurrers and motions where the construction of the pleadings is in issue, the court cannot in any way consider the real facts in the case, but is confined to what the pleadings contain.

"In the trial of an actual case, witnesses may go upon the stand and make any statement, however false and however absurd. With the above facts we are all familiar.

"In a proceeding in moot court exactly the same principles apply. The statement of facts (real facts in the case) cannot be used in the argument upon, or construction of, pleadings. Nor is it possible in moot court any more than in a real trial to prevent a witness from testifying on the ground that his testimony does not conform with the true facts in the case.

"The statement of facts is for two purposes:

"(1) To give the attorneys an outline upon which to draw their pleadings;

"(2) To assist the judge in arriving at the facts in deciding what the truth in each case is.

"If however the testimony of witnesses and other evidence introduced upon trial at the statement of facts agree, the court will find that such evidence so introduced upon trial is true, even though it may be opposed by stronger and a greater amount of evidence which does not agree with the statement of facts."

In addition to the above, the number of witnesses permitted to be called by either side is limited. Outlines of the testimony to be given and briefs of the

points of law to be relied upon are filed with the court at the beginning of the trial in order to insure preparation. Of course these are not seen by the adverse party. Several other rules relative to procedure are incidentally applied which space will not permit me to here enumerate. With us the practice court is no longer an experiment. It is as firmly established as are the classes in contracts, real property, or evidence. While there is without doubt room for improvement, the results obtained have always been decidedly satisfactory. A more active interest is taken in this work than in the classes. Many students try a greater number of cases each year than they are required to conduct, and two and a half years devoted to this valuable experience does make fair practicing lawyers of the great majority of them.

Before concluding let me refer briefly to the principal objections urged against the trial of issues of fact in practice courts. Mr. John B. Sanborn, of the University of Wisconsin, tells of having presided at a mock trial held by a fraternity where a student attorney objected because an answer of a witness was not contained in the agreed statement of facts. Mr. Sanborn says that this incident proves that a mock trial where you attempt to quiz witnesses is a farce. I wonder what he as presiding judge did when the attorney made that foolish objection. He does not say, but from the fact that he seems to regard the witness as confined to the statement of facts I assume that the objection was sustained. One who would make such a ruling cannot have given much thought to the subject. It is no more a sufficient reason to object to an answer because it is contrary to the statement of facts than it is in an actual trial a ground on which to strike out an answer of a witness that it is not

the truth; and let me say here that a graduate of a school of at least equal standing with the one represented by Professor Sanborn, in trying a case before me not long ago, addressing the court in a most earnest and concerned manner said: "Now, your honor, I move to strike out the witness' testimony; it is absolutely untrue, if it please the court, and it surely should not be allowed to remain in the record." Would it have been better from any standpoint, the name of the school that graduated this man, his own reputation as a lawyer, or the interests of his client, for him to have asked some farcical question in a practice court in law school and have been put right by a lawyer who knows how to practice law and how a moot court should be conducted, or to have waited, as this man did, to make a spectacle of himself while conducting an actual case in court.

This subject has usually been given but scant attention by law school educators. No less an authority than Professor Samuel Williston is quoted as saying: "The cross-examiner of course does not know the limits of the statement given to the witness, and inevitably asks so many questions which the witness cannot answer that the cross-examination is almost always ineffective and often farcical."

This difficulty never arises with us, for the very apparent reason that neither the cross-examination nor the testimony of the witnesses is limited by the statement of facts any more than they would be so circumscribed in a real trial.

Again, it is urged that practice cases cannot be made to come out as you wish them to. That in order to bring out the point desired, it is necessary to direct the steps to be taken by the student and that this takes away all initiative. To be sure, we cannot expect to substitute the moot

court work for all of the courses in substantive law in the curriculum. It has not yet been suggested that the case or text book systems of teaching law be supplanted by the moot courts. It has been our experience that in most cases the purposes for which the practice court is intended will be subserved by leaving it to the student to devise his own remedy. It is of little importance as to what action he brings, just so he institutes some action. On the other hand, there is no merit to the objection that for the instructor in charge to require a case to be brought or defended in a particular way takes away the initiative of the student, and if it did have that effect it would not be worthy of serious consideration as a reason for not maintaining the practice court. The entire legal training of every lawyer through law school and later in his practice is a study of precedent. In one sense you may say that we are all imitators, but it is nearer the truth to assert that the attorney learns to initiate and invent by analyzing the procedure and logic through which others have invented. In substantive law we do not hesitate to go back centuries for authority. The rules of evidence have undergone no substantial change from time immemorial, and it cannot be said that the genius to devise avenues of attack or escape for their clients has been diminished among lawyers, even though through generation after generation they have been fitting themselves to the task by following as nearly as possible the footsteps of others who have successfully conducted litigation.

The important part of every practice court is trial work. The two chief essentials of successful moot court trials are, first, a correct understanding and statement of facts; and,

judges should know from experience how a trial should be conducted—practicing lawyers who are also men of education and talent for trial work. These no school situated in a large city will have any difficulty in securing. The college located on a campus should employ them, no matter what it costs, or else cease to advertise themselves as supplying a thorough and complete training for

those who would fit themselves to practice law. I believe that the greatest advancement in the method of instruction in law colleges in the next decade will be found in the development of the moot court. I earnestly recommend it to every law school, and also as sincerely advise that prospective law students attend only those colleges of law which maintain adequate practice courts.

The Ethics of Advocacy*

By HON. FRANK IRVINE

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I PROPOSE to address myself to a consideration of the conduct of the lawyer during the trial, and especially during a trial by jury, considering nothing which has not a distinctly ethical basis, and yet speaking of some things whose ethical sanction is not always borne in mind.

It is not my purpose to discuss the entire course of the trial, or all questions of conduct which present themselves to the trial lawyer. I cannot even claim the merit of novelty for what I am about to say; but it is my impression that these topics I am approaching have received attention more frequently from the standpoint of successful advocacy than from the standpoint of ethical advocacy. Yet there is little difference in the results. It will be found that in the long run at least correct advocacy becomes successful advocacy.

Most deviations from the rules of pro-

priety are the result of too great zeal for success in the particular cause, or, if you prefer, too great zeal in support of the client's interest. Great mischief has been done by the frequent quotation of a passage in Lord Brougham's speech in Queen Caroline's case. This passage, standing alone, reads thus:

"An advocate, by the sacred duty which he owes to his client, knows, in the discharge of that office, but one person in the world—that client and none other. To save that client by all expedient means, to protect that client at all hazards and cost to all others, and among others to himself, is the highest and most unquestioned of his duties; and he must not regard the alarm, the suffering, the torment, the destruction which he may bring upon the other. Nay, separating even the duties of a patriot from those of an advocate, and casting them, if need be, to the wind, he must go on, reckless of the consequences, if his fate it should unhappily be to involve his country in confusion for his client's protection."

It has frequently been pointed out that Lord Brougham was not speaking as

*This address, delivered in the Hubbard Course to the students of the Albany Law School, was largely extemporaneous, and, owing to lack of time, the copy furnished the Review was not revised by Mr. Irvine.

broadly as the excerpt indicates, but that this characteristic outburst of eloquence was simply a threat to establish the marriage of George IV with Mrs. Fitzherbert.

It is entirely true that no selfish considerations should deter the advocate from performing his full duty toward his client. It is true that toward his client he owes his most direct and important duty. Having accepted a retainer, he is bound in honor as well as in law to see that his client's case is presented in its strongest and most favorable aspect. The client is entitled to have the law of his case determined finally by the court, and, in a law action, the facts by a jury. The advocate has no right, upon doubtful questions of fact or of law, to usurp the vocations of jury and judge, and finally and irrevocably determine such questions against his client, by refusing to submit them for consideration.

On the other hand, the lawyer must never forget that he is an officer of the court, and in that relation has as grave a public responsibility as the judge himself. He is trying the case with the object of winning it, and not of losing it, but of winning it in accordance with the facts and the rules of law, and not by perverting facts or by distorting the law. He is not the servant of his client, employed to win if he can by any expedient, but the servant of the law, retained by the client to secure the lawful adjustment of his rights.

The trial of an issue either of fact or of law is essentially a contest, and I have scant sympathy with those doctrinaires who would attempt to eliminate the contentious element from litigation. Litigation is in its very nature contentious, and must be carried on by contentious methods. This means that in its very nature the trial of an action must tend

to arouse what is known as "fighting blood," and without fighting blood to be aroused no advocate can hope for success or hope to do his client justice. But in all contests, from war to marbles, there are fair methods and foul methods, and the advocate must be ever on guard lest the excitement of the fray lead him beyond the domain of the fair. I suppose no lawyer can hope on all occasions to confine himself within the bounds of strict propriety. Those of us who have had any considerable experience in trials, I am sure, have lingering in our memories various courtroom scenes for which we were responsible, which we regret and would like to forget. The best safeguard I know against such lapses is in moments of temptation and excitement to remind yourself that you are *in* a court of justice, that you are *of* a court of justice, and that you are an officer of the *law*.

You will find, as you become familiar with the courts, that there are certain conventions, some general and some local. You will find that in some courts it is customary for the bar to rise as the judge enters, and to remain standing until he takes his seat. You will find that in other courts no such custom prevails. If you are used to the custom, I believe you will experience something of a shock when you witness the opening of court where this trifling tribute of respect to the judicial office is not shown. By rule of court in this state, counsel is required to stand while addressing the court or examining a witness. No such rule should be necessary. Some lawyers snap out objections to testimony without rising from their chairs and with an abruptness that savors of rudeness. With a quick witness objections must be promptly interposed; but many advocates manage to interpose them with suf-

ficient promptness and without any apparent violation of the rules of courtesy or good manners.

You will not infrequently observe lawyers within the bar, and not engaged in the case on trial, conferring together—perhaps to the disturbance of the proceedings, and certainly in disregard of the dignity of the court. The lawyer should bring his manners into the courtroom. If he possesses none, he should borrow a set for courtroom use.

Sometimes, when motions are on hearing, there is a scramble about the judge's desk not altogether unsuggestive of a football scrimmage. The court attendants should take care of that, and the judge should see that they do so. What is less readily handled is the habit of some lawyers who seem to take literally the phrase "to get the ear of the court," and whose applications are made in whispers. Such lawyers should be taught to hand up their papers in silence or to stand back and talk like men and lawyers.

Such things relate to courtroom etiquette, but they have their ethical aspect. A respectful and dignified demeanor in court accompanies and evidences respect for the law and for its ministers. Can it be expected that jurors, witnesses, litigants, or casual spectators will feel a due respect for the law or its officers if the lawyers themselves fail in manifestations of respect. In these days when the demagogues have discovered a certain popularity in reverting to the tactics of Jack Cade, it is especially important that lawyers should avoid, even in their slightest acts, all things which may tend to encourage disrespect for the courts, and therefore for the law itself.

The first and third of the Canons of Ethics deal specially with the relations

between the lawyer and the judge. The first enjoins upon the lawyer a respectful attitude toward the court, "not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance." The third warns the lawyer against "marked attention and unusual hospitality on the part of a lawyer to a judge, uncalled for by the personal relations of the parties." It is not that there is serious danger of a judge being cajoled by such cheap flattery into extending undue favors to the fawning lawyer, but because such attentions place the judge in a false position, and subject both him and the lawyer to suspicion.

In court an advocate must be always respectful, but never sycophantic or servile. He must sustain, not only the dignity of the court, but the dignity of the advocate. The judge rests under the same duty. History affords, it is true, occasional instances of arbitrary, overbearing, or insolent judges. You may be called upon to appear before men of that type, but judicial bad manners must not tempt you into behavior of a retaliatory character. A dignified and respectful assertion of your own rights is the only proper rebuke. Fortunately the instances are rare when the lawyer is called upon to withstand this supreme test of his temper.

Courtesy toward one's opponent is not so nearly universal as courtesy toward the court. Your opponent may assume a contemptuous attitude. He may provoke you by ridicule or by sneers. He may sometimes be openly and grossly insolent. It is hard under these circumstances to deal with him with good-natured courtesy. It is true he does not deserve it. But again your duty to the court and to the law demands that you observe your own good manners. It may be add-

ed that your duty to your client lies in the same direction. The jury has no sympathy with a rowdy. You are under no obligation to prevent its sympathy from drifting your way by convincing the jury that there are rowdies on both sides of the counsel table. If your opponent assumes untenable positions and advances absurd arguments, their character in that respect will impress itself upon the court or the jury, or you can at the proper time demonstrate their character. The method of doing so is not by open manifestations of ridicule or contempt.

Serjeant Harris, Mr. Wellman, and I believe all others who have undertaken to instruct us in the art of advocacy, have dwelt on the general policy of treating witnesses with frankness, respect, and amiability. It is not only good policy, but it is your moral duty to do so. You will naturally be well disposed toward your own witnesses, at least unless they prove stupid, or surprise you by testifying otherwise than as they have led you to believe. Still one's own witness sometimes tries one's patience. With your opponent's witnesses the trial is greater. Indeed, it seems to be the uniform method of some cross-examiners to proceed upon the theory that an adverse witness is necessarily a perjurer, to be bullied and threatened into self-contradictions. I again leave the policy of this system to Mr. Wellman, whose books should be read by every student.

But again policy and duty go hand in hand. Sometimes a witness commits deliberate out-and-out perjury. If you are sure the witness has done so, you owe him no duty of considerateness. Few witnesses, on the other hand, tell the complete and exact truth. They have not observed accurately. Their inferences, based upon what they did observe, have not always been correct. Their

memory has not been perfect. For these reasons, their testimony may depart very far from what you believe to be the truth. And yet the witnesses have been honest, and they are entitled to be treated as honest men. You must remember that the witness is at a disadvantage. You have the sole power of directing the line of inquiry and determining its scope. He may do nothing but answer the questions you put. You should confine yourself to putting questions, and to putting them fairly. In most cases he is not there because he wants to be there. Often he is not interested in the result. Presumably he is in attendance in furtherance of justice, and you have no right to treat him as if he were engaged in a conscious and deliberate effort to pervert justice, unless his own language and conduct have demonstrated this to be the fact.

I have spoken of putting questions fairly. You have no right skillfully to design questions to elicit from a witness—especially one unaccustomed to nice diction—answers which are literally false. You have no right to devise a question, and insist upon an answer which leaves the witness in a false position. You have doubtless heard of the advocate who said to a hostile witness, "Have you left off beating your wife?" and tried to compel him to answer it "Yes" or "No." The witness is entitled to fair treatment, not only during the examination, but in the argument. You must not put into his mouth words he did not utter, and you must not give to words he did utter a construction which you know he did not intend.

In thus dealing with the examination of witnesses, I have not meant to imply that you must show your hand before asking a question. In cross-examination it is frequently of great importance that

the witness should not divine your object. You have an entire right to test his memory—to test his powers of observation and his opportunities for observation. You have an equal right to lead him into the disclosure of prejudices or interests which will affect his credibility. You have no right to undertake to terrify him into contradictions by shouting at him. You have no right to lead him into untruthful statements by confusing him. You have no right to send him away from the stand humiliated and conscious of having failed in accuracy, when he has in fact been trying to tell the truth. Aside from the rights of the witness in such matters, it must be remembered that a witness, leaving the court after having been browbeaten, bullied, and ridiculed, is likely to cherish resentment against lawyers in general, and that such resentment extends itself to courts and to the law.

What should be the advocate's attitude toward jurors? The twenty-third of the Canons of Ethics must be observed:

"All attempts to curry favor with jurors by fawning, flattery, or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the court out of the jury's hearing. A lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause."

The caution against conversing privately with jurors about the case is obvious. The direct legal consequences of such conduct are usually a sufficient deterrent. Besides these, the suspicion of such conduct is enough in itself to ground an even graver suspicion, that of jury-fixing. Unfortunately there are lawyers who would not think of approaching a juror, who yet approach, or endeavor to approach, the judge. There

are even those who do not seem to realize that there is any impropriety in an attempt at private conversation with the judge concerning a pending case. The canon referred to is chiefly aimed at subtler methods than private conversation with judge or jury. It refers to undue solicitation for the convenience or comfort of jurors. The comfort of the jury should be kept in mind. The juror's lot is not always a happy one. He may during the trial be corralled with his fellows in a hotel, and the hotel is often selected with more regard to economy than comfort. The jurors are sometimes marched back and forth between courtroom and hotel in such a manner as to suggest a jail rather than the hotel as one end of the route. Possibly such things are necessary; possibly they are not; fortunately we are not called upon *now* to decide. The court should, and counsel may presume that it will, see to it that the physical comfort of jurors is as well looked after as is practicable.

Judges and lawyers accustomed to long sessions of court sometimes forget that as a rule the task of listening hour after hour with close attention to testimony and argument is to most of the jurors novel, and to all of them much more trying than to the more active and more experienced participants in the trial. Justice, as well as jurors, is likely to suffer if the sessions are unreasonably protracted, although the judge may be the recipient of thoughtless applause for vigorously pressing proceedings in such manner. I do not believe that counsel should be deemed guilty of any discourtesy toward the court if, when he observes that jurors are beginning to grow weary, he suggests a recess or adjournment. But no such suggestion should be made in the hearing of the jury.

The rather coarse flattery of jurymen by repeatedly referring to them as "intelligent and honest jurors" has largely gone into the waste basket of the advocate along with the perfervid oratory whereby Magna Charta, the Declaration of Independence, and the blood of our ancestors were invoked to determine the title to a heifer calf. A more professional and a more effective method is to assume the honesty and the intelligence of the jurors without telling them that you do so. Certain pernicious efforts to accomplish the same general object are, however, still observed. A turn of the head toward the jury, with a significant smile, as a witness answers a question or the court rules on an objection, may have its effect with some men; but these and similar tricks should be carefully avoided, more especially so because they are difficult for the court to control. A smile or a nod of the head may be a gross contempt of court, but it is hard to put it on record.

While the canon I have quoted should be strictly observed, it should also be remembered that jurors are entitled to courteous treatment and to fair treatment, and that this is true before they are sworn as well as afterwards. Advocates are not prodigal with their peremptory challenges, and there is strong motive for disclosing, if possible, a cause for challenge in the case of a juror who seems undesirable. No one can quarrel with the asking of reasonable questions for the purpose of eliciting ground of challenge to the cause or to the favor. Here, however, is presented the shyster's opportunity of asking questions ostensibly to disclose bias or to test intelligence, but in fact intended to confuse the juror. Again, the best jurors are likely not to be overanxious to serve. It is astonishing on a murder trial what

a large portion of the community seems to be violently opposed to capital punishment. It is very easy to dispose of jurors who ought to be acceptable by a little encouragement and a little leading in certain directions.

In this connection it may be well to utter a word of warning against the pernicious practice of endeavoring to try the case while impaneling the jury. The latitude necessarily permitted in the preliminary examination of jurors opens the door to advancing suggestions which may have a potent influence on the verdict, but relating none the less to matters which cannot be offered in evidence and which should not be considered in determining the merits. A single illustration will suffice:

There has arisen within comparatively recent years a group of insurance companies, commonly called casualty companies, whose business it is to insure against liability for damages for personal injuries. Employers of labor, especially in the more hazardous industries, quite generally avail themselves of the indemnity offered by these companies. It was soon perceived that juries would be more ready to give large verdicts for the plaintiff in personal injury cases if they knew that the loss would fall, not on a local industry, but on an insurance company. An attempt was made in New York to place the fact of insurance directly before the jury by evidence, on the theory that the defendant, if insured, was less likely to use due care. Such evidence was held inadmissible, and counsel quite severely rebuked for offering it. *Cosselmon v. Dunfee*, 172 N. Y. 507, 65 N. E. 494; *Loughlin v. Brassil*, 187 N. Y. 128, 79 N. E. 854. Thereupon the device was resorted to of inquiring of prospective jurors whether they were stockholders or interested in

any casualty company, or in a particular casualty company. This was supported on the theory that it tended to show interest adverse to the plaintiff in that class of cases, and therefore was ground of challenge to the favor. *Rinklin v. Acker*, 125 App. Div. 244, 109 N. Y. Supp. 125; *Hoyt v. Davis Manufacturing Co.*, 112 App. Div. 755, 98 N. Y. Supp. 1031. In spite of several cases of this character, the point seems to have been considered somewhat doubtful, and therefore the Legislature in 1911, by an amendment to section 1180 of the Code of Civil Procedure, expressly provided that such facts might be shown as ground of challenge to the favor.

There, therefore, can no longer be any legal objection to the asking of such a question, and it is possible that in some communities there may be grounds for suspecting that certain jurors may be stockholders or officers or employes of these casualty companies. I ask you, however, to consider, when you hear a lawyer ask every juror called on an ordinary panel if he is a stockholder or an employe of a casualty company, whether he is honestly trying to ascertain if the jurors are so interested, or is he trying to get before the jury the suggestion that the defendant is insured, knowing that he has no right to prove or to openly state that fact, and perhaps knowing that the fact is contrary to the suggestion. As the question is now clearly admissible, it must be left to the moral sense of the lawyer to determine whether or not he will ask it.

In the examination of witnesses different lawyers present as great a contrast from the standpoint of ethics as from the standpoint of skill. It is generally true in this as in other matters that the course dictated by moral considerations is also the course that leads

towards success. I would not venture to say that this is always true. Certainly devices resorted to by many successful advocates do not withstand any severe moral test.

The stupid advocate usually begins by objecting to every question asked by his adversary. The preliminary questions, which should be disposed of as quickly and directly as possible, are objected to as leading. The crucial questions are objected to as "incompetent, irrelevant, and immaterial." No more specific reason is given, because generally the only specific reason entertained by the objector is that the answer may hurt his side of the case. Persistent, groundless objections, due solely to stupidity, must be tolerated.

There is, however, another class of advocate, by no means stupid, who interposes persistent objections, stated as diffusely as possible, not because he believes the objections should be or will be sustained, but because he knows their effect will be to break up the continuity of the testimony, divert the attention of the jury, and lessen the effect of the adverse evidence. At least one judgment has been in recent years reversed, not because of error in any particular ruling, but in the cumulative effect of all the rulings, and of the constant interruptions of the counsel on trivial grounds, so as to prevent a fair trial. *Venuto v. Lizzo*, 148 App. Div. 164, 132 N. Y. Supp. 1066.

The right to object can hardly be curtailed, so here again the appeal must be to the moral sense of the advocate, not to abuse this right, and to use it only when there is fair ground for insisting upon the objection, and fair hope that it may be sustained. Never should the right be used with a conscious or sub-conscious feeling that the real object is

to prevent the orderly introduction of evidence.

What shall we say as to the propriety of offering evidence believed to be inadmissible under the rules of law? Upon this subject the twenty-second of the Canons says:

"A lawyer should not offer evidence which he knows the court should reject in order to get the same before the jury by argument for its admissibility."

This statement is sufficiently, and I believe properly, guarded. A distinguished judge has made this statement:

"Never press upon the court evidence you know to be incompetent, nor that which is even doubtful, unless you must have it or fail."

The reason he gives places emphasis upon the word *press*, and accounts for the rather remarkable qualification of his main statement. He adds:

"Too much persistency may prejudice you with the jury, wear upon the patience of the court, and, if by overpersuasion he yields, may result in a reversal upon appeal. If the case is one where you are likely to get a verdict, you cannot afford to imperil it by taking chances."

This is very well from the tactical point of view, but how about the ethical? It would seem that we may reach a reasonably safe conclusion from certain premises which will not be seriously disputed. A lawyer should not endeavor to lead the court into error, and there are higher reasons for this precept than the mere danger of reversal upon appeal. Therefore a lawyer should avoid, not only pressing, but offering, evidence which he *knows* to be inadmissible. If his purpose in offering it is to place indirectly before the jury a fact which he knows the court would not permit to be proved directly, his moral offense is augmented.

On the other hand, much evidence is of such a character that its admissibility

may be doubtful. It is not the duty of the advocate, nor is it his right, finally to determine doubtful questions upon his own judgment and against the interests of his client. Within limitations it is the right of the client to have doubtful questions submitted for determination—doubtful questions of law to the court, as much as doubtful questions of fact to the jury. It may be that the lawyer is strongly impressed with the opinion that certain evidence should not be admissible. If the courts have determined that such evidence is admissible, he fails in his duty if he does not offer it, in spite of his private opinion as to what the law ought to be. If its admissibility has not been decided, I believe he also fails in his duty unless he offers the evidence, if it be important, and submits the question for a decision. He should not, in this or in any other matter, express a personal opinion in support of his offer. Entire candor requires that the proffer should be made with a suggestion that it is not confidently advanced and calls for the exercise of deliberate judgment.

I have said that the lawyer fails in his duty unless he makes a proffer of such doubtful evidence. I have not been considering the tactical aspect of the problem, but this reacts upon the ethical. The weight of the doubtful evidence may be so slight that it is better to withhold it than to run the risk of a reversal. Your client has the right to have you exercise your judgment upon this feature. I only insist that, subject to this consideration, there is nothing unethical or unprofessional in offering evidence, the admissibility of which is open to doubt, and to present fair arguments for its admission. It is only when its admission is improperly pressed upon the court, or when there is an underlying motive to get before the jury indi-

rectly what you believe you cannot place before it directly, that a just ground of criticism is presented. The canon refers only to the offering of evidence which one *knows* the court should reject, when coupled with the motive of placing it before the jury by argument. On the whole, therefore, I believe that the canon errs somewhat on the side of liberality.

The field upon which I have ventured opens almost indefinitely. I shall not explore it much further, but wish to mention one other topic. One of the many pernicious effects of the so-called "exchequer rule," whereby the appellate court reverses a judgment if it finds any error in the record, presuming prejudice from error, has been the creation of a practice of trying a case in order to make a record, rather than in order to win below, because on appeal the trial has been of the record rather than of the case. Lawyers have been scrupulous to avoid inviting error on their own side, but have been astute in leading the court to make erroneous rulings against them, provided they could see, what they knew the appellate court would ignore, that the ruling would not in fact prejudice their case. "I don't care much what the verdict will be. I have got error into the record." How often have lawyers made such statements after the retirement of the jury!

I shall not attempt to characterize that policy. A description of the practice is sufficient, without express condemnation, and a proper characterization might involve the use of extreme language. Recent statutes providing in effect for the affirmance of judgments notwithstanding error, unless it appears that the error was of such a character as to affect the substantial rights of the appellant, will, I hope, be enforced by the appel-

late courts in such a manner as effectively to abolish the practice to which I have referred by making it unprofitable.

It is a familiar comment by American lawyers who have attended English courts that the English advocate tries his cases much more expeditiously than the American; that he interposes fewer objections, because practically no evidence is offered except what is admissible, or may be fairly argued to be admissible; that he is more candid with the court and more courteous toward his adversary; that, on the whole, he is a more skillful advocate, and has a keener sense of the proprieties. This is because his whole training has been for and in trial work. It is not probable that we shall ever have in the United States two legally recognized classes of lawyers, such as solicitors and barristers; but a differentiation between "office" and trial lawyers has begun to appear, and has in some of the largest cities become quite well marked.

In England the office of barrister is deemed the more dignified and the higher in rank. Here the tendency is to relegate the mere trial lawyer to an inferior rank. This tendency may be in part due to the very just realization on the part of the American Bar that the highest and most worthy office of the profession is so to advise clients as to avoid controversies if possible, and when controversies arise to adjust them by agreement, or if necessary by compromise, at least where it is possible to do so with less sacrifice than that involved in protracted and expensive litigation.

I fear, however, that the tendency is a resultant of the concurrence of the cause of which I have just spoken and of one less flattering to the trial lawyer; that is, that our trial lawyers have become such largely through accident, and not

by training. Too often their reputation is based upon fluency of speech, nimbleness of intellect, and cleverness in producing dramatic effects. Sometimes it is based in part at least upon willingness and aptness in devising tricks to obscure the issues, hoodwink the jury, and achieve a verdict against the truth—at least regardless of the truth.

It is to be hoped that, as the differentiation in the profession becomes more marked, the young man who essays the rôle of the trial lawyer will specially

study and train himself for the part, and that he will take for his exemplars, not the smart, shifty, and crafty practitioners, who threaten to bring discredit upon trial work, if they have not already done so, but the truly great advocates of to-day and of the past—men who know the law; men who master the facts, and know how to arrange them and adduce them; men who understand and perform their entire duty, not only to their client, but to the court, to the state, and to the public.

The History of a Title

A Conveyancer's Romance

By *URIEL H. OROOKER*
Of the Suffolk Bar

At the request of several law school professors who teach Real Property, this sketch is reprinted from the Winter Issue 1911 (Vol. 2, No. 11) of this magazine. No student of the law of Real Property should fail to read it.

OF THE locality of the parcel of real estate, the history of the title of which it is proposed to relate, it may be sufficient to say that it lies in Boston within the limits of the territory ravaged by the great fire of November 9th and 10th, 1872. In 1860 this parcel of land was in the undisturbed possession of Mr. William Ingalls, who referred his title to it to the will of his father, Mr. Thomas Ingalls, who died in 1830. Mr. Ingalls, the elder, had been a very wealthy citizen of Boston and when he made his will, a few years before his death, he owned this one parcel of real estate, worth about \$50,000, and possessed, in addition, personal property to the amount

of between \$200,000 and \$300,000. By his will he specifically devised this parcel of land to his wife, for life, and upon her death to his only child, the William Ingalls before mentioned, in fee, to whom, after directing his executor to pay to two nephews, William and Arthur Jones, the sum of \$25,000 each, he gave also the large residue of his property. After the date of his will, however, Mr. Thomas Ingalls engaged in some unfortunate speculations, and upon the settlement of his estate the personal property proved to be barely sufficient for the payment of his debts, and the nephews got no portion of their legacies. The real estate, however, afforded to the

widow a comfortable income, which enabled her during her life to support herself in a respectable manner. Upon her death, in 1845, the son entered into possession of the estate, which had gradually increased in value; and he had been enjoying for fifteen years a handsome income derived therefrom, when he was one day surprised to hear that the two cousins, whom his father had benevolently remembered in his will, had advanced a claim that this real estate should be sold by his father's executor, and the proceeds applied to the payment of their legacies. This claim, now first made thirty years after the death of his father, was of course a great surprise to Mr. Ingalls. He had entertained the popular idea that twenty years' possession effectually cut off all claims. Here, however, were parties after thirty years' undisputed possession by his mother and himself, setting up in 1860 a claim arising out of the will of his father, that will having been proved in 1830. Nor had Mr. Ingalls ever dreamed that the legacies given to his cousins could in any way have precedence over the specific devise of the parcel of real estate to himself. It was, as a matter of common sense, so clear that his father had intended by his will first to provide for his wife and son, and then to make a generous gift out of the residue of his estate to his nephews, that during the thirty years that had elapsed since his death it had never occurred to any one to suggest any other disposal of the property than that which had been actually made. Upon consulting with counsel, however, Mr. Ingalls learned that although the time within which most actions might be brought was limited to a specified number of years, there was no such limitation affecting the bringing of an action to recover a legacy. See

Mass. Gen. St. c. 97, § 22; *Kent v. Dunham*, 106 Mass. 586, 591; *Brooks v. Lynde*, 7 Allen, 64, 66. He also learned that as his father's will gave him, after his mother's death, the same estate that he would have taken by inheritance had there been no will, the law looked upon the devise to him as void, and deemed him to have taken the estate by descent. What he had supposed to be a specific devise of the estate to him was then a void devise, or no devise at all; and his parcel of real estate, being in the eye of the law simply a part of an undevise residue, was of course liable to be sold for the payment of the legacies contained in his father's will. It was assets which the executor was bound to apply to that purpose. This exact point had been determined in the then recent case of *Ellis v. Page*, 7 Cush. 161; and Mr. Ingalls was finally compelled to see the estate, the undisputed possession of which he had enjoyed for so many years, sold at auction by the executor of his father's will for \$135,000, not quite enough to pay the legacies to his cousins, which legacies, with interest from the expiration of one year after the testator's death, amounted at the time of the sale in 1862 to \$143,000. The Messrs. Jones themselves purchased the estate at the sale, deeming the purchase a good investment of the amount of their legacies, and Mr. Ingalls instituted a system of stricter economy in his domestic expenses, and pondered much on the uncertainty of the law and the mutability of human affairs.

By one of those curious coincidences which so often occur, Messrs. William and Arthur Jones had scarcely begun to enjoy the increased supply of pocket money afforded them by the rents of their newly acquired property, when they each received one morning a summons

to appear before the Justices of the Superior Court, "to answer unto John Rogers in a writ of entry," the premises described in the writ being their newly acquired estate.

The Messrs. Jones were at first rather startled by this unexpected proceeding; but as they had, when they received their deed from Mr. Ingalls' executor, taken the precaution to have the title to their estate examined by a conveyancer, who had reported that he had carried his examination as far back as the beginning of the century, and had found the title perfectly clear and correct, they took courage, and waited for further developments. It was not long, however, before the facts upon which the writ of entry had been founded were made known. It appeared that for some time prior to 1750 the estate had belonged to one John Buttolph, who died in that year, leaving a will in which he devised the estate "to my brother Thomas, and, if he shall die without issue, then I give the same to my brother William." Thomas Buttolph had held the estate until 1775, when he died, leaving an only daughter, Mary, at that time the wife of Timothy Rogers. Mrs. Rogers held the estate until 1790, when she died, leaving two sons and a daughter. This estate she devised to her daughter, who subsequently, in 1800, conveyed it to Mr. Thomas Ingalls, before mentioned. Peter Rogers, the oldest son of Mrs. Rogers, was a non compos, but lived until the year 1854, when he died at the age of 75. He left no children, having never been married. John Rogers, the demandant in the writ of entry, was the oldest son of John Rogers, the second son of Mrs. Mary Rogers, and the basis of the title set up by him was substantially as follows: He claimed that under the decision in *Hayward v. Howe*, 12 Gray, 49, the will of John Buttolph had

given to Thomas Buttolph an estate tail, the law construing the intention of the testator to have been that the estate should belong to Thomas Buttolph and to his issue as long as such issue should exist, but that upon the failure of such issue, whenever such failure might occur, whether at the death of Thomas or at any subsequent time, the estate should go to William Buttolph. It had also been decided in *Corbin v. Healy*, 20 Pick. 514, 516, that an estate tail does not descend in Massachusetts, like other real estate, to all the children of the deceased owner, in equal shares, but, according to the old English rule, exclusively to the oldest son, if any, and to the daughters only in default of any son; and it had been further decided in *Hall v. Priest*, 6 Gray, 18, 24, that an estate tail cannot be devised or in any way affected by the will of a tenant in tail. Mr. John Rogers claimed then that the estate tail given by the will of John Buttolph to Thomas Buttolph had descended at the death of Thomas to his only child, Mary Rogers; that at her death, instead of passing, as had been supposed at the time, by virtue of her will, to her daughter, that will had been wholly without effect upon the estate, which had, in fact, descended to her oldest son, Peter Rogers. Peter Rogers had indeed been disseized in 1800, if not before, by the acts of his sister in taking possession of and conveying away the estate; but, as he was a non compos during the whole of his long life, the statute of limitations did not begin to run against him, and his heir in tail, namely, John Rogers, the oldest son of his then deceased brother, John, was allowed by Mass. Gen. St. c. 154, § 5, ten years after his uncle Peter's death, within which to bring his action. As these ten years did not expire until 1864, this action, brought in 1863, was seasonably

commenced; and it was prosecuted with success, judgment in his favor having been recovered by John Rogers in 1865.

The case of *Rogers v. Jones* was naturally a subject of remark among the legal profession; and it happened to occur to one of the younger members of that profession that it would be well to improve some of his idle moments by studying up the facts of this case in the Suffolk Registries of Deeds and of Probate. Curiosity prompted this gentleman to extend his investigation beyond the facts directly involved in the case, and to trace the title of Mr. John Buttolph back to an earlier date. He found that Mr. Buttolph had purchased the estate in 1730 of one Hosea Johnson, to whom it had been conveyed in 1710 by Benjamin Parsons. The deed from Parsons to Johnson, however, conveyed the land to Johnson simply, without any mention of his "heirs"; and the young lawyer, having recently read the case of *Buffum v. Hutchinson*, 1 Allen, 58, perceived that Johnson took under this deed only a life estate in the granted premises, and that at his death the premises reverted to Parsons or to his heirs. The young lawyer, being of an enterprising spirit, thought it would be well to follow out the investigation suggested by his discovery. He found, to his surprise, that Hosea Johnson did not die until 1786, the estate having in fact, been purchased by him for a residence when he was twenty-one years of age, and about to be married. He had lived upon it for twenty years, but had then moved his residence to another part of the city, and sold the estate, as we have seen, to Mr. Buttolph. When Mr. Johnson died, in 1786, at the age of ninety-seven, it chanced that the sole party entitled to the reversion, as heir of Benjamin Parsons, was a young woman, his granddaughter,

aged eighteen, and just married. This young lady and her husband lived, as sometimes happens, to celebrate their diamond wedding in 1861, but died during that year. As she had been under the legal disability of coverture from the time when her right of entry upon the estate, as heir of Benjamin Parsons, first accrued, at the termination of Johnson's life estate, the provision of the statute of limitations, before cited, gave her heirs ten years after her death, within which to bring their action. These heirs proved to be three or four people of small means, residing in remote parts of the United States. What arrangements the young lawyer made with these parties and also with a Mr. John Smith, a speculating moneyed man of Boston, who was supposed to have furnished certain necessary funds, he was wise enough to keep carefully to himself. Suffice it to say that in 1869 an action was brought by the heirs of Benjamin Parsons to recover from Rogers the land which he had just recovered from William and Arthur Jones. In this action the plaintiffs were successful, and they had no sooner been put in formal possession of the estate than they conveyed it, now worth a couple of hundred thousand dollars, to the aforesaid Mr. John Smith, who was popularly supposed to have obtained in this case, as he usually did in all financial operations in which he was concerned, the lion's share of the plunder. The Parsons heirs, probably, realized very little from the results of the suit; but the young lawyer obtained sufficient to establish him as a brilliant speculator in suburban lands, second mortgages, and patent rights. Mr. Smith had been but a short time in possession of his new estate when the great fire of November, 1872, swept over it. He was, however, a most energetic citizen,

and the ruins were not cold before he was at work rebuilding. He bought an adjoining lot in order to increase the size of his estate, the whole of which was soon covered by an elegant block, conspicuous on the front of which may now be seen his initials, "J. S.," cut in the stone.

While the estate which had once belonged to Mr. William Ingalls was passing from one person to another in the bewildering manner we have endeavored to describe, Mr. Ingalls had himself, for a time, looked on in amazement. It finally occurred to him, however, that he would go to the root of this matter of the title. He employed a skillful conveyancer to trace that title back, if possible, to the Book of Possessions. The result of this investigation was that it appeared that the parcel which he had himself owned, together with the additional parcel bought and added to it by Smith, had, in 1643 or 1644, when the Book of Possessions was compiled, constituted one parcel, which was then the "possession" of one "Madid Engle," who subsequently, in 1660, under the name of "Mauditt Engles," conveyed it to John Vergoose, on the express condition that no building should ever be erected on a certain portion of the rear of the premises conveyed. Now it had so happened that this portion of these premises had never been built upon before the great fire, but Mr. Smith's new buildings had covered the whole of the forbidden ground. It was evident, then, that the condition had been broken; that the breach had occurred so recently that the right to enforce a forfeiture was not barred by the statute, and could not be deemed to have been waived by any neglect or delay; and that consequently, under the decision in *Gray v. Blanchard*, 8 Pick. 284, a forfeiture of the estate for breach of this condition could

now be enforced if the true parties entitled by descent and by residuary devises under the original "Engle" or "Engles" could only be found. It occurred to Mr. Ingalls, however, that this name "Engles" bore a certain similarity in sound to his own; and as he had heard that during the early years after the settlement of this country, great changes in the spelling of names had been brought about, he instituted an inquiry into his own genealogy, the result of which was, in brief, that he found he could prove himself to be the identical person entitled, as heir of Madid Engle, to enforce, for breach of the condition in the old deed of 1660, the forfeiture of the estate now in the possession of John Smith.

When Mr. Smith heard of these facts, he felt that a retributive Nemesis was pursuing him. He lost the usual pluck and bull-dog determination with which he had been accustomed to fight at the law all claims against him, whether just or unjust. He consulted the spirits; and they rapped out the answer that he must make the best settlement he could with Mr. Ingalls, or he would infallibly lose all his fine estate, not only that part which Mr. Ingalls had originally held, and which he had obtained for almost nothing from the heirs of Benjamin Parsons, but also the adjoining parcel for which he had paid its full value, together with the elegant building which he had erected at a cost exceeding the whole value of the land. Mr. Smith believed in the spirits; they had made a lucky guess once in answering an inquiry from him; he was getting old; he had worked like a steam engine during a long and busy life, but now his health and his digestion were giving out; and when the news of Mr. Ingalls' claim reached his ears, he became, in a word, demor-

alized. He instructed his lawyer to make the best settlement of the matter that he could, and a settlement was soon effected by which the whole of Mr. Smith's parcel of land in the burnt district was conveyed to Mr. Ingalls, who gave back to Mr. Smith a mortgage for the whole amount which the latter had expended in the erection of his building, together with what he had paid for the parcel added by him to the original lot. Mr. Smith, not liking to have anything to remind him of his one unfortunate speculation, soon sold and assigned his mortgage to the Massachusetts Hospital Life Insurance Company; and as the well-known counsel of that institution has now examined and passed the title, we may presume that there are in it no more flaws remaining to be discovered.

In conclusion, we may say that Mr. William Ingalls, after having been for some ten years a reviler of the law, especially of that portion of it which relates to the title to real estate, is now inclined to look more complacently upon

it, being again in undisturbed and undisputed possession of his old estate, now worth much more than before, and in the receipt therefrom of an ample income which will enable him to pass the remainder of his days in comfort, if not in luxury. But, though Mr. Ingalls is content with the final result of the history of his title, those lawyers who are known as "conveyancers" are by no means happy when they contemplate that history, for it has tended to impress upon them how full of pitfalls is the ground upon which they are accustomed to tread, and how extensive is the knowledge and how great the care required of all who travel over it; and they now look more disgusted than ever, when, as so often happens, they are requested to "just step over" to the Registry and "look down" a title; and are informed that the title is a very simple one, and will only take a few minutes; and that So-and-so, "a very careful man," did it in less than half an hour last year, and found it all right, and that his charge was five dollars.

The Night Law School of the University of Minnesota

By WILLIAM R. VANCE

Dean of the University of Minnesota Law School

THE history of the Night Law School of the University of Minnesota is peculiarly interesting, as well as instructive with reference to the development of legal education in this country. The University of Minnesota Law School was first established in 1888, at a time when there was already in the cities of St. Paul and Minneapolis

a large urban population at the very door of the University. From the beginning it was apparent to the administration of the University that there were many capable young men in the Twin Cities who desired to study law, but whose circumstances compelled them to work during the day in order to gain a livelihood. For the benefit of these

young men, night classes were held during the first session of the Law School. The records do not make any distinction between the day students and the night students until the session of 1891-92, when we find that 64 of the 229 undergraduates were in attendance upon the night classes.

During the first four years of the history of the school no distinction whatever was made between the day students and the night students in regard to the time required for winning a degree; both classes of students being required to spend two years in the Law School. In September, 1892, the University administration became convinced that the night students could not accomplish as much work in two years as could the day students. They therefore increased the length of the night course to three years. In September, 1895, the day course was also increased to three years. From that date until 1907 the policy of counting a year's work by the night students as equivalent in all respects to a year's work by the day students was pursued. The result was necessarily very greatly to increase the number of students taking their work at night, as compared with the numbers in the day school.

A careful examination of the curricula during these years shows that the whole course required for the degree in the day school was composed of about 900 lecture hours, while that required of the night students embraced no more than 600. This smaller amount of classroom attendance required of the night students, together with the possibility of spending the day in gainful employments, placed a heavy premium upon the night courses, especially in the case of the more mature, earnest, and ambitious students. It seems that

a very large percentage of this latter class elected to go into the night school, with the result that, on account of the greater maturity and seriousness of its membership, the night school appears to have done more efficient work than the day school. The result of the operation of these influences can be seen in the fact that the night classes steadily gained in numbers over the day classes, until in one year, 1896-97, there were 239 night students as compared with 195 day students.

In 1907, in accordance with the resolution of the Association of American Law Schools, the night course was extended to four years. The result was to diminish the attendance upon the night school by one-half. In the summer of 1911 a careful examination was made into the condition of the Law School and a report made to the Board of Regents, showing that the course as then given for the LL. B. degree covered during the three years of the day school about 1,000 lecture hours, while in the four years of the night course there were about 700 lecture hours.

It was then decided by the faculty, with the approval of the Regents, that the course of instruction in the day school should be extended so as to be equal to what may be called the standard three-year course in the best American Law Schools, namely, about 1,200 lecture hours. It then became apparent that, if the night course were to be kept upon an equality in thoroughness and extent with the day course, it would need to be extended so as to cover a similar number of hours. It was felt that a night course leading to the same degree as given in the day course must either be so extended as to cover the same amount of work or be abandoned. It quickly became apparent

that a night course embracing 1,200 hours would extend over not fewer than six years. Such a long period was believed to be wholly impracticable. Therefore it was decided to abandon the night course in so far as it led to a degree.

The history of the Night Law School of the University of Minnesota disclosed a very real demand for instruction in law in evening classes, and it was at once agreed that this demand should be met by the State University. To accomplish this result without endangering the thoroughness and extent of the regular work of the Law School done in its day classes, the following plan was worked out; the faculty having in mind the demonstrated fact that quite a large percentage of the night students studied law as an aid to their business careers, rather than because they intended to enter upon the practice of the profession:

Under the general scheme of University extension work carried on by all departments of the University, the Law School offered evening courses in the Law Building covering all of the branches of substantive law customarily taught in Law Schools. These courses, of the same general nature as the corresponding courses in the Law School curriculum, were planned to be rather less extensive and to cover a period of three years, being substantially the same as the night courses formerly given. Examinations are regularly held in these extension courses, and the student who completes three years of work will be given a certificate to that effect.

Under this plan, the occasional night student, who desires to qualify himself for admission to the bar, can after completing his three years of night work, take the procedural courses in the day school during a fourth year, and then go to the bar by passing the examination set by the State Board of Bar Examiners.

The plan for the conduct of night work further provided a means whereby the exceptionally able student, who is not infrequently found in night classes, may secure University credit and ultimately win his degree. Any student passing an examination in a night course in any subject with the grade of "Good" will be admitted to the regular Law School examination in that subject. If he passes this regular examination, he will be given credit for the subject in the regular Law School course. If he succeeds in thus securing credit for all of the required Law School work, he will be graduated with the regular class in the year in which he completes his work.

It is believed that by this plan the quality and extent of the regular Law School course leading to the degree are amply safeguarded, and at the same time an adequate opportunity for securing legal training is afforded to the young man who is compelled to gain a livelihood by working during the day, whether he desires such legal training merely as commercial training, or whether he seeks thus an approach to the bar, and even provides a method of securing a law degree in spite of the handicap under which he labors.

The Will of Mary Washington

(AS REGISTERED IN THE CLERK'S OFFICE AT FREDERICKSBURG, VIRGINIA)

IN THE name of God, Amen, I, Mary Washington, of Fredericksburg, in the County of Spotsylvania, being in good health, but calling to mind the uncertainty of this life, and willing to dispose of what remains of my worldly estate, do make and publish this, my last will, recommending my soul into the hands of my Creator, hoping for a remission of all my sins through the merits and mediation of Jesus Christ, the Saviour of mankind; I dispose of my worldly estate as follows:

Imprimis—I give to my son, General George Washington, all my land in Accokeek Run, in the County of Stafford, and also my negro boy George, to him and his heirs forever. Also my best bed, bedstead, and Virginia cloth curtains (the same that stands in my best bed-room) my quilted blue and white quilt and my best dressing glass.

Item—I give and devise to my son, Charles Washington, my negro man Tom, to him and his assigns forever.

Item—I give and devise to my daughter, Bettie Lewis, my phaëton and my bay horse.

Item—I give and devise to my daughter-in-law, Hannah Washington, my purple cloth cloak lined with shag.

Item—I give and devise to my grandson, Corbin Washington, my negro wench old Bet, my riding chair, and two black horses, to him and his assigns forever.

Item—I give and devise to my grandson, Fielding Lewis, my negro man, Frederick, to him and his assigns forever, also eight silver tablespoons, half of my crockery ware and the blue and white tea china, with book case, oval table, one bedstead, one pair sheets, one pair blankets and white cotton counterpane, two table cloths, six red leather chairs, half my pewter and one-half of my kitchen furniture.

Item—I give and devise to my grandson, Lawrence Lewis, my negro wench Lydia, to him and his assigns forever.

Item—I give and devise to my granddaughter, Bettie Carter, my negro woman little Bet, and her future increase, to her and her assigns forever. Also my largest looking glass, my walnut writing desk and drawers, a square dining table, one bed, bedstead, bolster, one pillow, one blanket and pair sheets, white

Virginia cloth counterpains and purple curtains, my red and white tea china, teaspoons, and the other half of my peuter and crockery ware, and the remainder of my iron kitchen furniture.

Item—I give and devise to my grandson, George Washington, my next best glass, one bed, bedstead, bolster, one pillow, one pair sheets, one blankter and counterpain.

Item—I devise all my wearing apparel to be equally divided between my granddaughters, Bettie Carter, Fannie Ball, and Milly Washington, but should my daughter, Bettie Lewis, fancy any one, two or three articles, she is to have them before a division thereof.

Lastly, I nominate and appoint my said son, General George Washington executor of this, my Will, and as I owe few or no debts, I direct my executor to give no security or appraise my estate, but desire the same may be allotted to my devisees, with as little trouble and delay as may be desiring their acceptance thereof as all the token I now have to give them of my love for them.

In witness thereof, I have hereunto set my hand and seal the 20th day of May, 1788.

MARY WASHINGTON.

Witness, John Ferneyhough.

Signed, sealed, and published in the presence of the said Mary Washington and at her desire.

Jno. Mercer

Joseph Walker.

Should a Young Lawyer Enter Politics?

The Opinion of President Woodrow Wilson

TEN years ago the following statement was published in this magazine (Am. Law School Rev. vol. 1, No. 2) over the signature of Woodrow Wilson in answer to the question, "Should a Young Lawyer Enter Politics?"

In my opinion, it is seldom wise for a lawyer to turn away from his profession to enter the active field of politics. It is as true to-day as it was when Coke said it that "the law is a jealous mistress"; and no man ever turns back to it from politics without a loss of some of the zest and devotion which he at first had for it. He never afterwards gets quite the same hold again upon those who would have been his clients.



Examination in Legal Bibliography

UNIVERSITY OF VIRGINIA LAW SCHOOL, DECEMBER, 1918

1. I should like to have an exhaustive opinion on the question whether I have a cause of action against my neighbor, whose pigeons depredate upon the plant beds in my garden. Please write out intelligent instructions as to what books I shall examine for the desired information, with a brief reference to methods.

2. (a) Explain the purposes of the Reporter Blue Books, and the manner of using them.

(b) What two other methods might you resort to in place of the Blue Books, to accomplish similar purposes?

(c) Explain the latter methods.

3. Explain: (a) The "Descriptive-Word" system in the American Digest; and (b) the "Key-Number" system.

4. If you were called upon to argue an important legal question, with access to but one series of books: (a) What would be your selection; and (b) Why?

5. Contrast a *precedent*, a *dictum*, and a *quære*.

6. (a) Name the repositories of primary authority in the state of Arizona.

(b) Which of these authorities is imperative there?

7. (a) Cite a hypothetical case reported officially and in three of the well-known unofficial series, carefully noting abbreviations and punctuation. (b) Cite another case from Alabama, reported only in the advance sheets of the Reporter System. (c) Cite another case from Maine, as reported only in one of the series of selected reports.

8. A statute prescribes a fine of \$10 for "riding or driving over a public bridge at a speed greater than a walk." On approaching such a bridge, Adamson, without his fault, lost control of his horses, which dashed across the bridge at a full gallop. Outline a brief argument, based on legal rules, as to his guilt or innocence.

9. In brief compass, say 25 to 40 lines, outline your ideas as to the characteristics of a good brief.

10. Write out, in intermediate and short forms, headnotes to the following case:

"Rule to show cause why a judgment entered against John Simpson and his wife, Margaret, in the circuit court of Franklin county, for \$163, on a note executed to the plaintiff by the defendants, should not be set aside. The judgment was confessed, on behalf of the defendants, by Silas E. Umbarger, their attorney, acting under a warrant of attorney authorizing the confession, and signed by the defendants in person, and after the marriage of the female to the male defendant.

"Booth, J. The judgment against the wife is necessarily void, being confessed on a void authority, as a married woman, under the common-law disabilities of coverture, cannot execute a valid warrant of attorney. And the judgment, being a joint one, if void as to one defendant, is void as to the other. It must therefore be set aside as to both defendants." *Rule absolute.*

Latest Bar Examinations in Massachusetts and Pennsylvania

MASSACHUSETTS BAR EXAMINATION

(December 28, 1912)

1. A. made a note of \$5,000, payable in one year to B., or his order. The note was endorsed by X. before delivery. A. failed to pay the note at maturity.

(a) What are B.'s rights, and what must he do to protect them?

(b) How many suits must he bring, and how shall he declare?

2. Brown, being about to die, gave each of his three sons, John, William, and Henry, a promissory note for \$5,000, payable in six months to Brown's own order and endorsed by him in blank. John got his note discounted at the bank. William delivered his to X. in payment of a debt. Henry kept his.

Brown's administrator refused to pay any of them, although Brown left sufficient property.

What are the rights of the bank, X., and Henry respectively?

3. Brown agreed to sell and Jones to buy six horses in Brown's stable for \$1,000, to be paid on delivery of the horses. The agreement was in writing. Jones, without any excuse, refused to take and pay for the horses.

What different remedies are open to Brown?

4. (a) Brown delivered to Jones a bill of sale covering six horses then in Brown's stable, and took Jones' note for \$1,000 payable in 60 days for the price. Before the horses could be taken away by Jones, the stable burned and the horses perished. Jones refused to pay the note, and Brown sued him.

What judgment should be rendered?

(b) What is the rule as to stoppage in transitu?

5. Brown, being in Europe, wrote to his brother in Boston, "You are hereby authorized to sell and convey my two houses on Beacon street, Boston, numbered 131 and 141, for \$35,000, each." His brother procured purchasers X. and Y. for each of said houses at the price of \$35,000. He signed on behalf of Brown in each case a purchase and sale agreement not under seal, and X. and Y. in each case signed same.

X., without any excuse, refused to perform his agreement. Y. refused to accept a deed signed and sealed by Brown's brother on his behalf.

Brown returned and brought suits for specific performance against X. and Y.

Should he prevail in said suits, or either of them?

6. Jones, an attorney, bought from his client, Carter, a note for \$5,000, made

by Parker, and paid Carter \$50 therefor, and agreed to bring a suit on the note at his (Jones') own expense, and further agreed to divide the amount collected equally between himself and Carter. Jones brought suit, and collected from Parker the full sum of \$5,000 and enough more to pay his expenses. He failed to pay any part of the \$5,000 to Carter.

What means of redress are open to Carter?

7. At a trial upon an indictment for a felony, the defendant requested that he be allowed to testify in his own behalf, and testified to a certain fact. Upon cross-examination he was asked whether he did not refuse to testify before the grand jury as to the same fact, on the ground that he might thereby criminate himself. He objected to this question, but the court required him to answer it, and the defendant excepted.

Should this exception be sustained?

8. If a married woman commits a criminal act in the presence of her husband, what presumption, if any, does the law raise as to the wife, and how, if at all, may any such presumption be overcome?

9. A husband hired and occupied, as a tenant at will, a house of the owner. The entrance to the house was by wooden steps from the street to the front door. These steps became by decay unfit for use.

The wife of the tenant, in the use of due care and in the nighttime, undertook to pass over the steps, when they broke by reason of their decayed condition, and she was badly injured. After the injury the owner repaired the steps.

Has she or her husband any remedy, and, if so, what and against whom?

10. Under what circumstances is the city of Boston liable for injuries caused to a person:

(a) By a defect in a street?

(b) By a defect in a schoolhouse?

11. Jones brought a bill in equity against Brown to reach and apply in payment of a note certain real estate alleged to have been conveyed by Brown with intent to defeat, delay, or defraud his creditors. Brown seasonably claimed a trial by jury on the question of his liability upon the note, and also upon the question of his having made a fraudulent conveyance.

The court refused to allow a trial by jury of either question.

How far, if at all, was the decision correct?

12. State the general rule as to the liability of common carriers for injuries to passengers, and for damage to freight, and to what extent the rule may be changed by contract.

13. A. sold B. a horse and orally warranted him quiet in harness. A. also gave B. a paper in these words, "Bought of A. a horse for \$200."

Can B. put in evidence the above warranty in an action by him against A. for breach thereof?

14. A. took from B. a deed of land, describing it as bounded on a street on the land of B. The deed contained no covenant that B. would build the street. A. sued B. for failure to build the street, and offered at the trial to prove that B. orally promised to build it if A. would buy the land.

Was the evidence competent?

15. In an action of tort by X. against a deputy sheriff for false imprisonment, the undisputed facts were that the officer attached a horse as the property of

X. on a writ in due form; that X. told the officer that the horse was not his; that thereupon the officer released the attachment and immediately arrested X. on the same writ on mesne process. Can X. maintain his action?

16. In an action on a promissory note, begun by the payee more than six years after its maturity, the note purporting to be signed by M., as maker, in the presence of an attesting witness, W., M. in his answer specifically denied his signature.

(a) Is the action barred by the statute of limitations?

(b) Can the plaintiff prove the signatures, or either of them, by calling as a witness X., who saw M. and W. sign?

17. A. obtained judgment against X. in an action brought by A. against X. and Y. on a joint contract made by X. and Y. with A. Service of the writ in this action was made on X. only. The judgment against X. remaining unsatisfied, A. brought an action against Y. Had Y. any defense to A.'s action by reason of the said judgment?

18. (a) Can a writ directed, "To the sheriffs of our several counties, or their deputies," legally be served by a constable?

(b) A constable and a deputy sheriff each had a writ of attachment to serve against B. The ad damnum in the constable's writ was two hundred dollars. In the deputy sheriff's, it was two thousand dollars. The only property B. had was a mule. The constable got the mule first and attached it. What could the deputy sheriff do, if anything, with reference to attaching the mule?

19. Is there a state insolvency law in Massachusetts, and, if so, what effect if any, does the Bankruptcy Act have upon it, and by what authority?

20. (a) X., owning \$90,000 worth of property, real and personal, dies intestate, leaving a widow and two children. What share of the estate does each take?

(b) Suppose X. by will gives all of his property to the two children, what rights, if any, would the widow have?

21. Name three subject-matters of equity jurisprudence which you regard as among the more important ones, and the general nature of the relief afforded in equity in each case.

e. g. Written contracts for the sale of land may be specifically enforced.

22. A. and B., brothers, inherit from their father certain real estate. A. conveys his interest in the land to B. by an ordinary quitclaim deed, which recites \$1.00 as the consideration. B. promised A. that he would hold and manage the real estate in trust for their joint interest. There was no other consideration for the conveyance by A. to B., except B.'s promise.

Can A. compel B. to account for one-half of the rents and profits?

23. A. conveyed his real estate to B. for no consideration and to defraud his creditors. At the same time, B. gave to A. a separate writing declaring that he (B.) held certain real estate described in the instrument (and which was in fact the real estate which had been conveyed to him by A.) in trust for A., and that he (B.) would convey the same to A. upon demand.

Can A. compel B. to perform his written agreement?

24. (a) What is meant by an inheritance tax?

(b) Are lineal descendants and the husband or widow of a decedent liable for such a tax?

25. (a) A., B., and C. are copartners, engaged in the grocery business under the firm name of the Beacon Supply Company. They are all married. They buy a lot of land to use in the business.

How should title be taken?

(b) They sell a parcel not wanted in the business.

Who should join in the deed?

(c) The firm is dissolved, and A. appointed to act in liquidation. Later a claim of a considerable amount is found, upon which it is necessary to bring suit.

Who should bring the suit?

26. X., Y., and Z. and seven others are engaged in the business of buying, holding, and selling real estate as a partnership under the firm name of "The Ten Associates."

Finding it inconvenient for so many persons to take and convey title, they consult you as to getting incorporated or arranging to do their business in a more convenient way.

What advice will you give them—

(a) As to getting incorporated?

(b) As to a way frequently adopted as more convenient?

27. Brown agreed orally with Jones to lease Jones a certain summer cottage from May 1, 1912, to October 1, 1912, at \$50 per month. Jones on account of sickness did not move in until July 1, 1912. October 1st Brown sent Jones a bill for five months' rent, \$250. Jones not paying, Brown brought suit. How much can he recover, and by what form of declaration?

28. Brown, holding a mortgage, foreclosed it by entry and by sale for breach of condition, and was the purchaser at the sale. Four years later, X., the mortgagor, brought a suit in equity to open the foreclosure because the sale was not

properly conducted. The court found that the sale was not properly conducted, but dismissed the bill.

Was the decree correct, and, if so, upon what ground?

29. (a) Brown, as administrator, gave a bond with sureties in the usual form for \$10,000. There were two next of kin. Brown paid the debts, but embezzled a large part of the personal property, and was removed and ordered to pay over to a new administrator a balance of \$6,000. He failed to do this. Who was entitled to sue upon his bond, and what proceedings were necessary?

(b) For what amount should judgment have been entered, and in what form?

30. X. took a mortgage in the usual form for \$5,000, covering three separate parcels of land. There was a breach of condition, and he wished to foreclose under the power of sale. Each of the parcels, if sold separately, was likely to bring sufficient to pay the mortgage.

(a) How many of the parcels should he advertise for sale?

(b) Should he sell all at once, or in parcels, and, if in parcels, how many parcels?

PENNSYLVANIA BAR EXAMINATION

(December 3 and 4, 1912)

1. Explain the meaning and application of the term "criminal intent," and state when a person accused of crime may be convicted thereof, in the absence of a specific criminal intent to commit the crime with which he is charged.

2. The A. Company has been duly incorporated as a water company for the purpose of supplying water to the inhabitants of a certain town in Pennsylvania. In pursuance of this purpose it has acquired a small piece of land, at a point where a number of streams converge, and is building thereon a dam, which will impound the waters of the streams and create a reservoir covering many acres of land adjoining that now owned by the company. B. is the owner of a tract of such adjoining land, containing 100 acres, one-fourth of which will be completely submerged by the waters of the reservoir when completed. The A. Company has offered to buy from B. that part of his land affected by the im-

provement, but he declines to sell less than his whole farm, and no agreement as to price has been reached.

In this situation what are the respective *rights* and *remedies* of the two parties in respect to the land of B. which would be overflowed by the dam?

3. A., the owner of a tract of land situate partly in X. county and partly in Y. county, duly made and executed to B. a mortgage of the whole tract for the sum of \$5,000, in which the land is fully and properly described as being partly in X. county and partly in Y. county. This mortgage was duly recorded in Y. county, but has never been recorded in X. county. After the creation of the mortgage, C., without any actual knowledge of its existence, obtained a judgment for \$3,000 against A. in X. county, under which that portion of the tract of land in X. county was duly levied upon and sold by the sheriff to D. for the sum of \$2,500. There are no other judg-

ments against A. in X. county, and no mortgage of the said land outstanding, except that held by B.

What distribution should be made by the sheriff of the fund realized by him at the sale under C.'s judgment, and does D. obtain an unencumbered title to the land purchased by him at the sheriff's sale or not?

Give the reasons for your answer.

4. Briefly explain the origin and nature of *trusts*, and name and define the several classes of trusts into which they are usually divided.

5. In a trial for murder, in which the fact of the killing was admitted, and the only defense was insanity, evidence tending to prove which was adduced, the court charged: "The law is that when the killing is admitted, and insanity is alleged as an excuse, it is the duty of the defendant to satisfy the jury that insanity actually existed at the time of the act, and a doubt as to such insanity will not justify the jury in acquitting on that ground. The law presumes sanity when an act is done, and that presumption can only be overthrown by fairly preponderating evidence." The accused was found guilty. On appeal the foregoing instruction is assigned as error.

What should the decision of the appellate court be?

Give the reasons for your answer.

6. A. was a passenger riding in a car of the X. Railroad Company, and sitting beside a closed window. B., who was standing by the railroad track as the car was passing, mischievously threw a stone, which struck the car window by which A. was sitting, and shattered the glass, by the flying pieces of which A. was severely cut.

What are A.'s rights and remedies for

the recovery of damages for this injury?

Give the reasons for your answer?

7. What was the purpose of the Statute of Quia Emptores? About when was it enacted? How did it affect the alienation and the tenure of lands? And was it or not ever in force in the state of Pennsylvania?

8. Three brothers, A., B., and C., wishing to provide a home for their mother, contributed \$3,000 each to a common fund, with which a house was purchased in the name of A., for her use and occupancy during the balance of her lifetime. Upon the mother's death, B. and C. claim a one-third interest each in the house, which A. refuses to allow them.

Can they enforce their claims against A., and, if so, how?

Give the reasons for your answer.

9. In common-law pleading, what is a plea *by way of traverse*, and how does it differ in form, purpose, and effect from other kinds of pleas? Give an illustration of its use.

10. A. delivered to an express company, at its office in Philadelphia, a package of goods consigned to himself in New York. The express company gave to A. a receipt for said package which contained the following provision: "In consideration of the rate charged for carrying said property, which is regulated by the value thereof and is based upon a valuation not exceeding \$50.00, unless a greater value is stated herein, the company shall not be liable for loss or damage of said property, in any event, for more than the value so stated, nor for more than \$50.00, if no value is stated herein." The actual value of the goods in said package was

\$500, but no value was given to the express company or stated in the receipt. The charge for carrying the package, if its value had been stated as \$500, would have been twice as much as that which was actually charged and paid by A. as the package was shipped. Through the negligence of the express company's servants the package was lost.

What remedy has A. for the loss of his goods, and what will be the measure of his damages therein?

Give the reasons for your answer.

11. In what cases does the orphans' court have jurisdiction to decree the specific performance of contracts for the sale and conveyance of lands, and what is the procedure in that court for the enforcement of the specific execution of such contracts?

12. Briefly explain the origin and the nature of *fee simple estates* in land, and enumerate and define the several rights with which the tenant of such an estate becomes vested upon the acquisition of it by him.

13. A boy five years old has been injured by the wrongful act of a responsible person. The injury is such that the child will be a cripple for the rest of his life, and the nursing and care which he will require will be a burden on those who have the care of him as long as he lives.

What rights of action are there in this case against the wrongdoer, in favor of the father or other members of the child's family, or in favor of the child himself, and what will be the measure of damages in such actions?

Give the reasons for your answer.

14. Briefly explain the distinction between *general*, *special*, and *local* laws, and give some account of the nature and

scope of the provisions of the Constitution of Pennsylvania relating to the enactment of local and special laws by the Legislature of that state.

15. Enumerate the several personal actions at common law, briefly explain the distinctions between them, and state to what extent any of these forms of action have been modified by statute in Pennsylvania.

16. A. was the owner in fee of two adjoining tracts of land. Across one of them he constructed a drain for the use of buildings erected upon the other. After this drain had been in use for five years, he sold and conveyed the two tracts on the same day, one to B. and the other to C. Nothing was said about the drain to either party or in either of the deeds. B. was the purchaser of the tract across which the drain was constructed, and C. of the tract for which it was used.

What are the respective rights of B. and C. in respect to the drain, and how can this question be brought into court for judicial determination?

Give the reasons for your answer.

17. Explain the nature and purpose of each of the writs respectively known as *feri facias*, *levari facias*, *venditioni exponas*, and *attachment execution*, and briefly state the practice to be followed in their use.

18. A., having obtained judgment against B., has issued an attachment execution thereon and summoned C. as garnishee. C. has funds in his hands belonging to B. sufficient to satisfy A.'s claim, but nothing more. B. is insolvent, and C. is accommodation endorser for him on a promissory note which will not fall due for one month yet, when C. will without doubt be required to pay it.

Can C. use the fact of his liability for B. on said note as a defense in the attachment proceedings?

Give the reasons for your answer, and briefly discuss the rights and liabilities of the garnishee in such proceedings.

19. A., B., and C., copartners, owned a warehouse, which had been purchased by them with partnership money and for partnership purposes. A. has died intestate, leaving to survive him two sons, both of whom are of age.

What are the respective rights of B. and C., the surviving partners, and of the sons of A., in this piece of real estate, and how can a good title thereto be made to a purchaser thereof?

Give the reasons for your answer.

20. The state of X. has by statute granted to the Y. Telegraph Company the "sole and exclusive privilege and right of establishing and maintaining lines of electric telegraph" within that commonwealth.

Is this statute a valid exercise of the reserved powers of the state of X., or is it in conflict with the powers conferred upon the general government by the Constitution of the United States, and therefore void?

Give the reasons for your answer.

21. A., who was the owner of a tract of land worth \$5,000, being in debt to B., gave to B., on June 1, 1909, his "judgment note," in due form, with warrant of attorney to confess judgment for \$1,000. B. did not immediately enter judgment on this note, but held it until after its maturity, one year from the date thereof. On May 1, 1910, A. borrowed from C., who knew of the outstanding note held by B., the sum of \$3,000, and gave him a mortgage for that amount upon the said tract of land, which was duly and promptly recorded.

The note of B. not being paid by A. when due, B. entered judgment of record thereon September 1, 1910. On December 1, 1910, A. borrowed an additional \$1,000 from C. and gave him another mortgage for that amount upon said land, which was duly and promptly recorded. On April 1, 1911, D. obtained judgment against A. on a verdict for \$3,000, under which the land was duly levied upon and sold by the sheriff on July 1, 1911, when D. himself became the purchaser thereof for \$2,000.

Will D. be obliged to pay to the sheriff any of the price thus bid by him for the land, and, if so, how will the fund be distributed by the sheriff, and subject to what encumbrances, if any, does D. take title to the land?

22. Explain and illustrate the origin and nature of the distinction between an *equitable* and a *legal* assignment.

23. A. sold to B. his grocery business in the city of Philadelphia, and entered into a covenant that he would not again engage in the same business anywhere within the state of Pennsylvania. A. subsequently removed to Pittsburgh, and there established himself in the grocery business, which he is now conducting.

What, if any, rights has B. against A., and how should he proceed to have them judicially determined and enforced?

Give the reasons for your answer.

24. Briefly discuss the distinction between *real* and *personal* property in respect to its origin and nature, and in respect to the modes by which these two classes of property may be respectively acquired and transferred.

25. Briefly discuss the doctrine of consideration in respect to its origin and application to simple contracts at common law.

26. B. sold three lots of goods to C., which were to be shipped to C. by the X. R. R. B. shipped the goods as directed, receiving from the railroad company bills of lading such as were in ordinary use, containing the provision, amongst others, that the railroad company would not be liable for loss occasioned by the act of God or by the negligence of its own employés.

The first lot of goods was injured by long delay in transmission, caused by extraordinary floods on the line of the road.

The second lot arrived in due course, but greatly damaged through the negligence of the company's servants.

The third lot was never delivered to the consignee, and its loss was never accounted for or explained by the railroad company.

By whom must the loss be borne in each of these cases?

Give the reasons for your answer.

27. Explain the nature and purpose of a "rule to show cause," and, where matters of fact are in issue in such a proceeding, state how the evidence is to be produced and heard.

28. B., a lawyer, and A., a merchant, are close friends and neighbors. A. calls upon B. at his home and confidentially tells him of certain transactions A. has just been having with C. Six months later C. sues A. on account of these transactions, and A. then engages B. as his counsel. At the trial of this cause, C. calls B. as a witness to testify to the admissions made to him by A. six months before.

Is B. a competent witness for this purpose or not?

Give the reasons for your answer.

29. On March 1, 1912, for a good and valuable consideration, A. gave to B. his

negotiable promissory note for the sum of \$1,000, payable in four months after date. This note B. had discounted for his own account at the X. Bank, with the full knowledge of A. Some days before the note fell due, A., wishing to have it renewed for another period of four months, gave a new note for the same amount and in the same terms to B., who took it to the bank and had it accepted in renewal of the former note, which, on the day of its maturity, he obtained and took away with him. Shortly afterwards B. showed the old note to C., who had knowledge of the original transaction, and, stating that A. had not paid the note, offered to sell it to C., "without recourse," at a discount. C. thereupon bought the note upon terms offered, and notified A. that he now held it, and demanded its payment from him.

What are the respective rights, liabilities, and remedies of the several parties to these transactions?

Give the reasons for your answer.

30. A. entered into possession of a house and lot leased by him from B., by parol, for a term of two years, at the rental of \$12 per month. Before the expiration of the first year B. informed A. that the rental for the second year must be increased to \$15 per month, and to this A. agreed. At the expiration of the second year, A. having paid no part of the rent for that year, B. brought an action against him to recover the sum of \$180 as rent alleged to be due.

Can B. recover judgment for this amount, or not?

Give the reasons for your answer.

31. Briefly explain the nature of a co-partnership at common law, stating how such a copartnership may be formed, and what are the principal rights and liabilities of the several copartners in re-

lation to each other and in relation to copartnership creditors?

32. A. was duly put upon trial in Philadelphia for the murder of B. The evidence clearly proved beyond a reasonable doubt that B. was deliberately and with malice aforethought shot to death by A. in New Orleans. No objection was made on behalf of the defendant to the jurisdiction of the court, and no evidence was adduced by either the prosecution or the defense to show where New Orleans is.

What action should the court take, and can A. be legally convicted or not?

Give the reasons for your answer.

33. Briefly discuss the contract of marriage, particularly stating what are the requisites to its validity in Pennsylvania, and how it differs from other contracts in respect to the nature of the obligations which it imposes, and in respect to the manner in which it may be discharged.

34. B., a contractor, entered into a contract with A. to erect for him a dwelling house for the sum or price of \$5,500. Some days after this contract had been reduced to writing and signed by the parties, B. explained to A. that, by a mistake of his clerk, \$5,500 had been inadvertently written in the bid submitted by him for the work instead of \$5,800, which was the true amount of its estimated cost. A. thereupon verbally agreed that, if B. would go on with the work, he would pay him the \$5,800 when the house was completed, but no change was actually made in the written agreement. After the completion of the dwelling A. refused to pay more than \$5,500.

Can B. recover the additional \$300?

Give the reasons for your answer.

35. Enumerate and briefly describe the several kinds of estates which may simultaneously coexist in the same piece of land.

36. B., a married woman, dies intestate, possessed of both real and personal property, and leaving to survive her a husband, three children, and four grandchildren, the lawful issue of one of her children now deceased.

What proceedings should be taken for the orderly administration and settlement of her estate, and in what proportions are the survivors entitled to share in the real and personal property left by her?

37. A. wrote, and sent to B. by the hand of C., a paper in the following language: "B., please give the bearer, C., the goods which he will select, not over \$500, on my account. [Signed] A." C. selected goods of the value of \$500, and took them from B.'s store. B. charged the goods on his books to "C. (on order of A.)." C. used the goods in his own business, but did not pay for them, and B. did not attempt to collect the bill from him for one whole year afterwards, during which time C. had become entirely insolvent and no longer able to pay his indebtedness. B. then demanded payment of the bill from A., and on his refusal brought suit against him for its recovery.

Can B. recover the amount of the bill from A., or not?

Give the reasons for your answer.

38. A. made his will in proper form, whereby he disposed of all his property, giving legacies to a number of his relatives, and devising and bequeathing all the residue of his estate to certain charitable institutions. He signed the will at the end thereof. An attestation clause in the usual form, to be subscribed by

two witnesses, was appended to the will; but no witnesses actually subscribed their names thereto. A. died three months after the date of the will. The will is now offered for probate, with the testimony of two witnesses who know the testator's handwriting and can prove the genuineness of his signature thereto.

Should it be accepted for probate upon this proof, and, if it is so accepted and proved, what legal effect will it have as to the disposition of A.'s estate?

What officials must determine whether it shall be probated or not, and what officials must decide all questions as to its construction and effect?

Give the reasons for your answers.

39. What are the prerequisites of title to personal property by *gift*: (1) *Inter vivos*? (2) *Causa mortis*?

40. Of what classes of facts do the courts take judicial notice without proof at the trial of a cause?

41. It is provided by rule of court that motions for new trials shall be made within four days after verdict, and that, in default of such a motion in any case within the four days, judgment shall be entered upon the verdict rendered therein. A verdict having been rendered against B., a defendant in said court, and no motion for a new trial having been made within the prescribed time, judgment was duly entered upon the said verdict. Afterwards, during the same term of court, B. discovers reasons which he thinks should entitle him to a new trial, and desires to apply to the court for such relief in the case.

In what manner and form should such application be made, and may the court yet grant the new trial?

May the action of the court in granting or refusing such application for a

new trial be reviewed by the appellate court, or not?

Give the reasons for your answers.

42. A. placed in B.'s factory a valuable machine, which B. was to try in actual use for three months, and, if it proved satisfactory upon such a trial, was to purchase at the end of that time. Within the three months B. filed a voluntary petition in bankruptcy, and a trustee was appointed, who took possession of B.'s factory and all its contents, including said machine.

What are A.'s rights in respect to this machine, and how and in what court should he assert and maintain them?

Give the reasons for your answer.

43. What is the writ of habeas corpus, how does it operate to protect the liberties of the citizen, and when and how may the privilege of the writ be suspended in the United States?

44. A. gave to B. his promissory note for the sum of \$500, and subsequently, before the payment thereof, became a bankrupt and was duly discharged under the provisions of the bankrupt law. The note of B. was not proved as a claim against A. in the bankruptcy proceedings, and no dividend was paid thereon; but after his discharge A. promised B. that he would pay the note in full two months thereafter.

After the expiration of this time, has B. any right of action against A. or not?

Give the reasons for your answer.

45. A testator devised to his daughter, who was neither married nor contemplating marriage at the date of the will, a certain piece of real estate "for life only, remainder after her death to her child or children in fee; but if my said daughter at the time of my decease has neither husband, child, nor children,

she may dispose of said real estate as she sees fit." The daughter subsequently married, and afterwards died intestate, leaving to survive her her husband and two minor children.

Who are entitled to the real estate, and in what proportions?

Give the reasons for your answer.

46. A. is a man possessed of a large fortune. B., his wife, has left him and lives apart from him, without his consent, because, as she alleges, of his cruel and barbarous treatment, which renders life with him intolerable. A. does not admit the truth of his wife's charges, and he refuses to support her unless she returns and lives with him. B. has no means of her own, but is an accomplished musician, and able to support herself comfortably as a professional performer and teacher of music, which she has been doing since leaving her husband. She

requires a good piano in the exercise of her profession, and has bought one in the name of her husband and had it charged to his account, but delivered to her at her lodgings. The dealer from whom she bought the piano was informed of the facts as to the existing relations with her husband. The husband refuses to pay for the piano.

Can the dealer recover from him, or not, upon this statement of facts?

If so, why? If not, why not?

47. Briefly explain and illustrate the distinctions between a *vested remainder*, a *contingent remainder*, and an *executory devise*.

48. Name any five equitable remedies, briefly explain the origin, the nature, and the purpose of any three of them, and illustrate their application by appropriate examples.

Book Reviews

LETTERS TO A YOUNG LAWYER. By Arthur M. Harris, of the Seattle Bar. Pp. 193. Price \$2.00.

We followed the letters to a young lawyer as they came out in the American Law School Review and Docket, and found them entertaining as well as very suggestive. In fact, the writer clipped them out, and now has them preserved among "Miscellaneous Papers" at his office. It was, therefore, a pleasure to find them published in attractive book form. They are written in an easy, colloquial style, as letters ought to be. And yet they are serious and informing discussions of subjects that may well concern nearly all young lawyers. For instance, the letter regarding the young man's choice of a place to start practice touches upon a proposition that looms large during one's last year at law school. The author very evidently holds a brief for the moderate-sized

cities of the West. And we must admit that he states his case persuasively, even though we of the larger Eastern cities may disagree with his conclusions. Then, too, the letter on hard work is well worth reading, for we cannot remind ourselves too often that hard work is the price of success.

Much of the substance of the letters would be equally appropriate if written to old lawyers, and, whether appropriate to us old lawyers or not, we are all interested in the young lawyer. We are often sarcastic or contemptuous of the young lawyer's efforts and training, but we do love to give him advice and to recount to him our own experiences. After we have been giving such advice for some years, and have gradually gathered in more and more experience to talk about, we like to read up what others may have to say along similar lines.

Altogether we recommend this little book to both the young and old lawyer.

—The Green Bag.

GILMORE ON PARTNERSHIP (Hornbook Series), including Limited Partnerships. By Eugene Allen Gilmore, Professor of Law in the University of Wisconsin. 1911. Buckram. Price \$3.75, delivered.

In common with the other volumes of the valuable Hornbook Series, Mr. Gilmore here presents the leading principles of the entire subject in boldly stated paragraphs, followed by comment and supported by citation. For the student we know of no other series which equals this in its clear statement of important principles, so framed and shaped as to catch alike the eye and the intellect, and this followed up by a concise, well-digested treatise upon the "text," so to speak, with enough reference to authority to enable the subject to be well elucidated and the statements proven to be the law as laid down by the courts.

Its value to the practitioner is equally as great, for, in the hurried examination one is often compelled to give to a question, it is exceedingly useful to find summed up in small compass the gist of the law, with ample authority to support.

Mr. Gilmore's work is well done, and even in the cursory examination which the reviewer has been compelled to give to the work he has found it eminently satisfactory and in no way unworthy of its predecessors.

The chapter on Limited Partnerships is up to date in every way, and furnishes an excellent compilation of the various state statutes on this subject.

—*Virginia Law Register*.

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LAW OF BANKS AND BANKING. By Francis B. Tiffany. 1912. Pp. 669. Price \$3.75.

While this book is one of the Hornbook Series, it is designed for the use of practitioners, rather than law students. With this view in mind, the author has covered such practical questions as are compatible with a brief presentation of the subject. The notes contain very full citation of cases, and are supplemented by references to the Century and Decennial (Key-Number) Digests. By these references one who uses the book will be able to find additional cases on the point to which the note refers, and will also have at his command cases which may be tried later and found in the digests.

In treating the subject the author has limited himself largely to the law governing the business transacted by banks and bankers. He has entered the general field of corporation law only where the law of banking

corporations seemed to require special attention.

The brief compass of the book would not allow a discussion of the many varying provisions of state statutes on the subject of banking. However, the field of national banks has been covered, as well as federal statutes relating to the law of banking. In an appendix are printed the National Bank Act, together with other provisions of the federal statutes on this subject. This appendix includes historical and explanatory notes by the editorial staff of the publishers.

The Negotiable Instruments Act, in so far as it relates to the banking business, is referred to, and the author points out the changes introduced by it into the law concerning checks and other negotiable instruments.

In scope of subject and method of treatment the book is an admirable one, and should be of great value to the practitioner as a reference book. At the same time, as a compact presentation of the law of banks and banking, with statements of general principles in black letter type, it should prove useful to the student.

—*Yale Law Journal*.

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THE LAW OF QUASI CONTRACT. By Frederic Campbell Woodward. 1913. Pp. lxxvii+498.

This is a very satisfactory book on a subject that is not yet well understood by the profession. The only previous treatise is Keener's, published some twenty years ago. No doubt that work has had an extremely illuminating effect, but its authority may well be bolstered up by the additional work of another man. Mr. Woodward's work affords this support. He is in substantial agreement with the opinions of Keener, though he shows independence and originality. Keener's work did not fully explain the nature of quasi contract and define its place in the scheme of obligations. Woodward makes some further progress in that direction.

It is impracticable to treat in one volume all of those obligations that are quasi contractual in their nature—for example, judgments, the law of infancy, remedies in equity. Even in segregating a new logical legal field under a new name, much respect must be paid to historical development. Mr. Woodward limits the field of his undertaking with skill, restricting it to legal remedies in cases of unjust enrichment. His subdivision of this subject under the three heads of benefits conferred "in misreliance on a right or duty," "through a dutiful intervention in another's affairs," and "under constraint," seems based on logic. Some experience with

it seems necessary before passing on its practical convenience.

The author has a doubt as to whether the remedy by restitution in cases of breach of contract by defendant and in cases of tort is really quasi contractual. Nevertheless, the historical development of those subjects requires their inclusion, and justifies him in treating them under an independent heading. It seems regrettable that he saw fit to express another doubt as to the correctness of *Moses v. Macferlan*, and that he has aligned himself squarely against *Britton v. Turner*. But his selection and discussion of leading cases are uniformly good, in particular *Price v. Neal*.

—*Yale Law Journal*.



INTERNATIONAL LAW (Hornbook Series).

By George Grafton Wilson. Pp. xxiii+623.

The author of this handbook has long been known to students of international law as one of the authors of *Wilson and Tucker's International Law*, a text-book which has gone through several editions. The present volume resembles in general arrangement and style the last edition of *Wilson and Tucker*, though the introductory matter on the nature and historical development of international law has been largely omitted, and other chapters expanded. *Wilson's* classification and arrangement are clear, logical, and on the whole admirable.

The rapid development of international law since the meeting of the First Hague Conference in 1899 has rendered large parts of existing text-books obsolete. The present volume embodies fully the results of recent conventional changes and is in all respects fully abreast of the times. It contains copious extracts from *The Hague Conventions of 1907*, the *Declaration of London of 1909*, and other recent international agreements, the full texts of which are given in the appendices. The reader may be inclined at first sight to criticise the adoption in the text of so many provisions from recent conventions, the status of which is still a matter of uncertainty; but a closer examination will show that Professor Wilson has put in the text only those provisions on which a large number of Powers are agreed. Still the status of the conventions given in the appendices is nowhere defined, and the student may sometimes question how far some of the provisions quoted in the text are binding.

General treaties and conventions constitute at present the most active source of international law, but very few of these international agreements have been signed by all of the Powers. The student, therefore, is nat-

urally perplexed to know what is and what is not international law. The only light the author throws on this subject is the statement (page 11) that, "where a considerable number of states are parties to an agreement, as to the Convention for the Pacific Settlement of International Disputes, signed at The Hague, October 18, 1907, such a convention becomes in effect international law for the signatory states." It must be confessed that this is rather an unsatisfactory basis on which to rest a system of law. And yet the author has discarded almost entirely the ethical and historical bases on which the older treatises were founded, and has undertaken to base his work on concrete statements of existing rules derived largely from recent treaties and conventions. It should be said, however, that these shortcomings are due to the changing condition of international law, rather than to the method employed by the author.

It may well be doubted whether the time is ripe for a new treatise. While the present volume does not rise to the dignity of a treatise in the older sense, it is clear, concise, logical, and accurate. It was designed as a practical text-book for law students, and as such is excellent. I know of no other book which puts before the student in such concrete form the existing rules of international law.

—*John Holladay Latané, in the American Journal of International Law*.



HORNBOOK ON THE LAW OF JUDICIAL PRECEDENTS, OR THE SCIENCE OF CASE LAW. Price \$3.75. By Henry Campbell Black, M. A.

Nearly a quarter of a century ago, the late Mr. Justice Miller of the Supreme Court of the United States, in a public address on the use and value of authorities in the argument and decision of cases, expressed his surprise that no book had yet been written, or none that he had seen, distinctively devoted to the subject on which he was speaking.

If a systematic and comprehensive treatise on the law of judicial precedents was a desideratum at that time, it is much more so to-day; for the reported decisions have enormously multiplied, and the lawyer's problem now is, not merely to find the law, but to weigh and estimate the value of what he discovers. Now, more than ever, he needs a guide through "the lawless science of the law, the countless myriad of precedents." Also it is true that the very theory of the precedent has been vigorously assailed of late in high quarters, and there are evidences of an insistent demand for greater flex-

ibility in the interpretation of the law and a closer correspondence between the rulings of the courts and what is supposed to be the spirit of the age or the wants and wishes of the people.

For this reason, Mr. Black has written a handbook of judicial precedents, a complete treatise on the subject of judicial precedents or the science of case law. It is at once theoretical and practical, and therefore adapted, not only for the instruction of the student in what is perhaps the most im-

portant part of his legal education, the judging, testing, and employment of the weapons with which he is to fight his forensic battles, but also of substantial value to the practitioner in the preparation of briefs and the argument of causes, furnishing him with a full discussion of the rules which the courts themselves have prescribed for their governance in these matters and an abundant citation of authorities to support his criticisms and contentions.

—*Boston Transcript.*

Notes and Personals

The annual meeting of the American Bar Association will be held this year in Montreal, Canada, on September 2d, 3d, and 4th.

The Association of American Law Schools will meet at the same place, the first session to be held on Monday evening, September 1st. The central purpose in planning for the meeting of the Association of American Law Schools this year has been to have such discussion as will tend to arouse the bar and law teachers to the necessity of meeting the present attack upon our courts and the administration of law by requiring of the bar a higher standard of efficiency, to be produced in part by more advanced requirements for admission to the bar, better and broader legal training, and a more careful attention to examinations by state boards. The address of Henry M. Bates, Dean of the University of Michigan Law School, who is President of the Association of Law Schools this year, will treat of these matters. The principal address will be delivered by the former President of the United States, William Howard Taft. Professor E. R. Sunderland, of the University of Michigan Law School, is to read a paper on "The Teaching of Practice in Law Schools."

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Henry C. Hill, member of the faculty of the School of Law of the University of Kansas, died very suddenly on Monday, April 7, 1913, at Lawrence, Kansas. His death was caused by pneumonia, with which he was ill only three and a half days. Funeral services were held in Lawrence at the home of Dean Green of the School of Law, and the body was escorted to the train by the entire Law School and taken to the home of his parents in Point Elizabeth, Maine, in charge of James W. Green, Dean of the School of Law, and C. W. Clarke, one of the students, who represented the Elks, of which Profes-

sor Hill was a member. Funeral services were also held in Maine.

Professor Hill was a graduate of Bowdoin College (1888) and of the Law School of Michigan University (1899). He practiced law in Detroit, Michigan, for a time, and then became a member of the law faculty of John B. Stetson University, Florida. Later he was professor of law in the University of Missouri, from which position he came to the University of Kansas in 1910. He was appreciated by his colleagues and by his students, valued for his abilities as a teacher, extremely interested in the progress of his students, assiduous in his devotion to the subjects taught by him, and popular for his personal qualifications. He was frequently requested to speak at the general student gatherings of the entire University. "His death," writes a member of the faculty of the School of Law, "has cast a gloom over the entire school, faculty and students alike, as each one feels it a personal loss."

Professor Hill was a bachelor, and spent his vacations entirely with his aged parents in Maine.

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The general tendency manifested in many of the more progressive law schools to make the work of the students more practical and to vitalize the practice courses has led to the introduction of two new courses into the curriculum of the Law School of the University of North Dakota. One of these is a course in the preparation and construction of legal documents, offered as an elective, by Professor Charles E. Carpenter. The other new course is a course in Brief Making, conducted by Professor Roger W. Cooley, and will be required work for third-year students. It is intended to supplement the course in Procedure now given by Professor Lewinsohn, and the regular Practice course conducted by Judge

Charles A. Pollock. The course, which runs throughout the year, will cover the following subjects: (1) Legal Bibliography. A general description of the various repositories of the law, such as constitutions, statutes, decisions; the various series of reports, text-books, encyclopædias, digests, and other books designed to aid the lawyer in finding the law. (2) How to Find the Law. An explanation of the methods of using the books described for the purpose of finding authorities. (3) Use of Authorities. A study of the methods of determining the weight and value of a decision as an authority, rules for determining the doctrine of a decision, and general rules as to the interpretation and use of decisions and statutes. (4) The Trial Brief. An explanation of the methods of analyzing the facts and determining the theory of the case, and the preparation of the preliminary or trial brief. (5) The Brief on Appeal. An explanation of the purpose and requisites of the brief on appeal, with suggestions as to its proper preparation. (6) Argument of Questions of Law. The practical application of the knowledge acquired, by the argument of questions of law before a court composed of the instructor in charge of the course and two or more students, who shall prepare opinions.



On November 7th, His Excellency, the Right Honorable James Bryce, British Ambassador, gave a most interesting and brilliant address before the students of the George Washington Law School upon the great judges whom he remembered. His memory went back to the great Lord Chancellor Westbury, and included no less than seven Lord Chancellors. It was impossible to confine the attendance to the law students, as many others desired to hear Mr. Bryce. His interesting and vivid portrayal of these great figures upon the English bench, and his remarkable analysis of the secrets of their success, delighted every one who heard him. He left the entire Law School deeply indebted to him for this characteristic service, one which, perhaps, no one else could render.

The Law School gave its annual dinner at Rauscher's on the evening of Saturday, April 19th. The guests of honor were Hon. Thomas R. Marshall, Vice President of the United States; Rear Admiral Charles H. Stockton, retired, President of the University; Hon. John B. Larnier, President of the Board of Trustees of the University; Hon. A. S. Worthington, and Hon. B. F. Macfarland, members of the Law Committee of the Board; and Ex Chief Justice Stanton J. Peelle, of the Court of Claims. Dean Gregory presided, and the speakers were the Vice President of the United States, Rear Admiral Stockton, speaking for the Univer-

sity, Hon. John B. Larnier, speaking for the Board of Trustees, Professors Clephane and Fraser, speaking for the Law Faculty. Charles C. Tucker, Esq., speaking for the Law School Association, and Mr. John A. Diener, speaking for the law students. Between 250 and 300 were in attendance, including United States Senator Johnson of Maine, Hon. B. G. Humphreys, M. C., of Mississippi, and Second Assistant Postmaster General Joseph Stewart. The dinner is intended to be held annually, and to bring together the Faculty, Alumni, and students, together with guests of distinction.



The new three-story stone law building of the University of Oklahoma is complete, except for the interior finishings and furniture. It is pronounced by visitors a handsome and commodious structure, and Dr. Kendrick C. Babcock, specialist in higher education to the United States Bureau of Education, recently said of it: "In its general plan and scheme of equipment, it is the best planned law building I have ever seen." It will be ready for occupancy in September, and will be opened with imposing dedicatory ceremonies, in which prominent legal educators will participate. Perhaps its leading feature is a beautiful Gothic reading room and library, occupying an entire story, set with immense columns and arches of oak, and containing, immediately adjacent to the stack room, professor's studies, with much lower ceilings than the main room, over the top of which runs a mezzanine reading room reached by small stairways from the main reading room. It is handsomely and fully equipped throughout.

To still further insure the success and growth of the Law School, the Oklahoma Legislature in April passed a bill providing for the exchange of copies of all Codes, Compilations of Statutes, Session Laws, Oklahoma Reports, Oklahoma Criminal Reports, Journals of the House and Senate, and other legal publications heretofore or hereafter published by the state of Oklahoma, with the authorities of the other states and territories and the United States, and that the books received in exchange should go to the Law School Library. This is to continue indefinitely, and will in time result in a splendid library. Large additions in other lines are also being continually made to the library.

Great attention is being paid in the University of Oklahoma Law School to the development of the Practice Court. Professor J. B. Cheadle, the instructor in charge, has had eight years' experience as a practicing lawyer in Oklahoma. He has been making a study of practice court work in all schools where it has been made a leading feature. In the new law building soon

to be opened will be one of the most perfectly appointed courtrooms to be found in any law school building. The students are taking great interest in the work. It also makes a special appeal to members of the profession, who seem to see in it a method of so training the student as to avoid much needless blundering in the early years of his practice.

This school is less than four years old. Its current enrollment is 125. It has maintained from the start the standards of the Association of American Law Schools, to whose membership it was admitted at the beginning of its third year.

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was adopted by the Association in 1908. In 1909 a committee of six members of the New York State Bar Association, theretofore appointed, of which General Hubbard was chairman, and of which committee Judge Alton B. Parker and Dean Fiero were members (all three of whom are trustees of the Albany Law School), reported substantially the canon of ethics theretofore adopted by the American Bar Association, together with the following resolutions:

"Resolved, that the Court of Appeals be respectfully requested to amend its rules for the admission of attorneys and counselors at law by adding to rule 1 thereof the following:

"Each applicant for admission to practice as aforesaid shall be required to state in the affidavit filed by him on his application for ad-

Obituary Notice

WHILE this issue of the Review was in press, William Albert Keener, one of the most prominent law school teachers in the country, died in his home in New York City. Mr. Keener, at the time of his death (April 22), was head of the law firm of Keener, Lewis & Layng in New York, and professor in the Fordham University Law School.

As a teacher of law Mr. Keener had but few equals and no superiors. During the years he was connected with Columbia University as professor of law and dean of the Law School he established a reputation as one of the greatest expounders of law this country has produced.

Mr. Keener was born in Augusta, Ga., March 10, 1856. He was graduated from Emory College, Oxford, Ga., in 1874, and then went to Harvard to study law. He was admitted to the Bar of New York state in 1878 and soon afterward married Miss Frances McLeod Smith. Mr. Keener was appointed Story professor of law at Harvard University and subsequently Kent professor of law at the Columbia University Law School. He afterward became dean of the Columbia Law School.

In September, 1902, Mr. Keener was appointed Justice of the Supreme Court of New York by Governor Odell to complete the term of Justice Beach, deceased. He was nominated at the following election, but was defeated.

Mr. Keener was well known as a writer on legal subjects. He was the author of a "Treatise on Quasi Contracts," and the editor of "Cases on Contracts," "Cases on Quasi Contracts," "Cases on Corporations" and "Cases on Equity Jurisdiction."

inaugurate the course, the Board deferred the lectures until the opening of the school year, 1903-1904.

Recently the subject of Legal Ethics has received marked attention from the Bar, and it has been under consideration at various times by the American Bar Association. It was discussed at the annual meeting of that association, and very fully considered by committees appointed for that purpose during a period extending over some three or four years. A committee of the association, of which Gen. Thomas H. Hubbard and Hon. Alton B. Parker were members, reported a canon of ethics which

passed a resolution changing the Department of Jurisprudence to the School of Jurisprudence. The Department of Jurisprudence was the name under which the law school at Berkeley was conducted since 1894.

During the last year the school has undertaken the publication of the California Law Review. The first number appeared on November 1st. The Review is published bi-monthly by the faculty and students of the School. Professor O. K. McMurray is the editor, and is assisted by a faculty board of five members and a student board of fourteen. It is the aim of the Law Review to discuss legal subjects of particular

interest to the Western States and to publish comments and notes on recent cases. The Review has received very encouraging support in the contribution of articles and in circulation.

In the Summer Session of 1913, Dean William R. Vance, of the University of Minnesota Law School, will give a course in Insurance and a course in Wills. Professor Barry Gilbert, of Iowa State University Law School, will give a double course in Torts.

Mr. Oscar K. Cushing, of the San Francisco Bar, has again offered a prize of \$100 for the best discussion of some subject of adjective law. The competition is open to the students both of the Stanford Law School and of this school. The subject chosen for this year is "The Jury System in California from Its Inception to the Present Day."



During the second semester of the current school year the Practice work in the University of Chicago Law School has been conducted by Dean Edward W. Hinton, of the University of Missouri Law School. Beginning with the Autumn Quarter, 1913, Professor Hinton will become a regular member of the Chicago Law Faculty, in particular charge of the work in Practice and Evidence. The Practice courses will be reorganized, and a serious effort will be made to give to students in this branch of work instruction that shall be as thorough and practical within its field as that given in substantive law. For a number of years Professor Hinton has conducted work of this character with marked success at the University of Missouri, and two years ago he gave a short demonstrative course in Trial Practice at the University of Chicago, which was received with much approval.

Professor Clarke B. Whittier, of the University of Chicago Law School, who has been absent on leave during the current year, will return to his work in October, 1913.

Professor Henry Schofield, of the Northwestern University Law School, gave part of the instruction in Equity, and Professor William U. Moore, of the University of Wisconsin Law School, gave the course in Suretyship at the University of Chicago Law School during the current year.

The work of the Summer Quarter (June 16-August 29) at the University of Chicago Law School will include courses in Contracts, Criminal Law, Title to Real Estate, Wills, Constitutional Law, Mortgages, Damages, Sales, and Trusts. The work will be conducted by Dean Hall and Professors Cook and Freund of the regular faculty, and by Dean W. P. Rogers, of the Cincinnati Law School, Professor E. A. Gilmore, of the Wisconsin Law School, Professor D. O. McGov-

ney, of the Tulane Law School, and Assistant Professor A. W. Scott, of the Harvard Law School.



The Law School of Georgetown University added another victory to its long series of successful competitions in intercollegiate debates, when, on Friday, April 4, 1913, it entered the list with Cornell in a contest for supremacy. The subject of this debate was:

"Resolved, that when an act passed under the police power is held unconstitutional by the courts under the state Constitution, the people, after an ample interval for deliberation, shall have the opportunity to vote on the question whether they desire the act to become a law notwithstanding such decision."

The Cornell debating team was composed of William D. Smith, '15, New York, Howard G. Wilson, '14, New York, and Remington Rogers, '14, New Jersey. The Georgetown debating team was composed of one student from the Academic Department, Paul W. McQuillan, '13, New York, and two students from the Law Department, Ashton H. Williams, '15, South Carolina, and Horace H. Hagan, '13, Oklahoma. Paul Armstrong, '13, Utah, also of the Law Department, was alternate. The judges were Hon. James M. Graham, Member of Congress from Illinois, Hon. John Burke, Treasurer of the United States, and Hon. F. H. Newell, Director of the United States Reclamation Service. A unanimous decision was rendered in favor of Georgetown, which was the more creditable in view of the fact that Cornell had previously debated the same question. Renewed interest is being taken in debating at Georgetown. The debating team which defeated Cornell was chosen from a large number of contestants, representing both the Academic and Law Departments of the University. Debating has always been encouraged by the Law Faculty, and the organization of debating clubs dates from a very early period in the history of the Law Department. The traditions of the University in debate and the high standard established are a source of inspiration to the students. Ever since intercollegiate debating was taken up at Georgetown, the debating teams representing the University have been almost uniformly successful. Liberal prizes are offered to the best speakers in the intersociety debates, which take place at the Law School from time to time throughout the school year. A member of the Academic Faculty and a member of the Law Faculty act as coaches for debating teams, and individual instruction is obtained at the University in the course on Public Speaking.

Several new law clubs have been formed at the Law School recently. "The Edward Douglas White Law Club," named for Chief Justice White, of the Supreme Court of the United States, Georgetown, '58, and "The

Forum," hold frequent meetings. The formation of law clubs is encouraged. Prizes are offered for essays among the students composing them. Members of the Faculty, and other prominent members of the Bar, deliver talks before these clubs from time to time. Major Samuel T. Ansell, of the office of the Judge Advocate General of the Army, recently delivered an address on the subject of Courts-Martial before the Morris Club, which bears the name of Justice Martin F. Morris, a member of the Faculty up to the time of his death, and an Associate Justice of the Court of Appeals of the District of Columbia.

The growth of the Law Department of the University is well illustrated by the fact that the School has already outgrown its present quarters, which were greatly enlarged in January, 1911. The older portion of the building now occupied by the Law School was completed and occupied on November 30, 1891. Its capacity was doubled by the erection of an addition in 1911. The large addition to the Law School buildings, which has been in course of erection since the fall of last year, will be ready for occupancy this spring. This annex, connected with the present buildings and forming a part of them, will double the size of the School. The principal feature of the new building will be a large auditorium, of modern equipment, with a seating capacity of about 900. It is planned to have special lectures delivered in this auditorium before the entire student body by men of national prominence in judicial and professional life from the different sections of the country. The new addition will include three large lecture halls, which will seat, respectively, 400, 325, and 250 students. An office will also be provided in this building for the editorial staff of the Georgetown Law Journal, a law review edited by students, which is attracting a great deal of favorable comment.



Washburn Law School has been fortunate this year in securing a new building in an excellent location. For ten years the school has been lodged in rented quarters, and has been deprived of many conveniences. The new home will be occupied by the beginning of the summer term, and will be one of the most up-to-date law school buildings in the West.

The building is well lighted, is of pressed brick and stone, two stories and a basement, with ample room for lecture halls on the first floor. The library and private offices for professors will occupy the entire second floor.

The excellent location is revealed in that the new home of the law school is midway between all the courts in the city. The police court, which meets each afternoon, is only one block distant. The Shawnee county

courthouse, with the court of Topeka and the two divisions of the district court, is but a block and a half away. The Federal offices, the home of the United States District Court and of frequent hearings of the Interstate Commerce Commission, is one block north and a block and a half east. The Kansas Supreme Court is three blocks south. Probably no law school in the United States is so centrally located with relation to the various courts, and the opportunity to visit and study the methods from the lowest to highest jurisdictions cannot be overestimated.

An elective course on the study of Kansas statutes has been added to the course of Washburn Law School. To ignore entirely local laws has been found in many cases to leave a wrong impression as to what the law really is in the minds of many students. Judge B. F. Milton has been secured to give the work.

Judge Stephen H. Allen, former member of Kansas Supreme Court, has been chosen a member of the law faculty. Judge Allen was a member of the commission that revised the Kansas Code, and at present is a member of the Committee on Comparative Laws of the American Bar Association.



The present academic year has been a most prosperous one for the Law School of the University of North Dakota. The enrollment is the largest in the history of the school. It is now 101, and there are 47 others taking some law. But more gratifying than the increase in attendance is the improvement in the quality of the student body, and the earnestness and enthusiasm for the work which is being manifested. For the first time the first-year law class has a large proportion, about half, of men who have had three or more years of college work before taking up the study of law. The rest are for the most part men of maturity, there being only one student under the age of 21. A number of innovations in the curriculum have been successfully tried out. One of them was a course of sixteen lectures constituting an introduction to the study of law. It is believed the plan, which was largely the work of Professor Roger W. Cooley, was somewhat unique. The first week of the semester for the first-year men was devoted to the lectures, which were given by the several members of the faculty. They consisted of an explanation of some of the most common conceptions and of legal terms of the most frequent occurrence. The subjects of the lectures were as follows: (1) Law, Definition, General Classification; (2) History and Sources of Law; (3) Courts; (4) Forms of Action; (5) Pleadings; (6) Trial of Actions, Decision, and Review; (7) Decisions as Precedents; (8) Extracting Doctrine of Case, Authoritative Element, Dicta; (9) the

same; (10) Legal Bibliography; (11) Government, Sovereignty, the State; (12) Persons, Natural and Artificial, Statutes; (13) Property, Kinds, Ownership, Acquisition; (14) Contracts, Fundamental Principles; (15) Torts, Fundamental Principles; (16) Crimes, Fundamental Principles. The plan followed seemed a decided improvement over the expedients not infrequently resorted to for the same purpose. In some cases courses on the elements of law, which are by no means elementary, have been tried, and have proved futile for beginners. Other schools have tried courses outlining the principal branches of the law, an entirely superficial proceeding, and one which has necessitated repetition. The plan has the further merit of giving the whole of the introduction to the subject before the study of any branch of the law is begun, instead of having the course run parallel with such studies.



The University of Maine College of Law has received of David D. Stewart, Esq., of St. Albans, Maine, the Nestor of the Maine State Bar, and executor and residuary legatee of Levi M. Stewart, late of Minneapolis, deceased, twenty thousand dollars, *in trust*, for the benefit of the *Maine College of Law, at Bangor*, to be called "*The Levi M. Stewart Fund*," and to be kept as a permanent fund, the principal to be safely invested, and the yearly interest to be used for the benefit of the students of the College in such manner as the Trustees, or College Government, shall determine. This gift, the first great gift that has come to the Law School, has been greatly appreciated, and the income of the fund will be so used as to advance, in the highest possible degree, the interests of legal education.

Mr. E. H. Bowen has been appointed instructor in Common-Law Pleading in succession to Forest J. Martin, deceased, lecturer on Common-Law Pleading. Mr. Martin's lectures on Common-Law Pleading have been dedicated by his wife, Mrs. Clara J. Martin, to the College of Law. These valuable and highly practical lectures have been just published under the auspices of the Maine Law Review Association as part of the sixth volume of the Maine Law Review.

Former Chief Justice L. A. Emery, of the Maine Supreme Judicial Court, has given an excellent series of lectures on Probate Law and Probate Practice, and will lecture this spring on *How to Run an Equity Suit*.

Henry B. Montague, Esq., of Southbridge, Mass., will lecture this spring on the *History of New England Law*, dealing with Plymouth Colony Jurisprudence, Massachusetts Bay Laws, and Thomas Lechford, the First New England Lawyer, and some of his successors.

The lectures of Hon. L. C. Southard, LL. D., of Boston, Mass., on *Medico-Legal*

Relations, have been postponed because of Dr. Southard's absence in Europe on professional business.

Judge Charles J. Dunn has been appointed lecturer in Maine Practice in succession to Forest J. Martin, Esq., deceased, lecturer on the same subject. Judge Dunn is widely known as a capable practitioner, and his lectures will be of great benefit to the College of Law.



In all Law Schools in the country which may be regarded as institutions of the first class, instruction is now being given on the important subjects of Legal Bibliography, Methods of Research, and Brief Making. Mr. R. A. Daly, who is known personally by the majority of law school students throughout the country, is now completing a very successful year among the Law Schools. Mr. Daly has given his course of instruction on "*How to Find the Law*" to the junior and senior students this season in the following schools: Chicago-Kent Law School, John Marshall Law School, Northwestern University Law School, Hamilton College of Law, De Paul University, Marquette University Law School, University of Wisconsin Law School, University of Missouri Law School, Kansas City Law School, Creighton University Law School, University of Nebraska Law School, Denver Law School, University of Colorado Law School, University of Texas Law School, University of Oklahoma Law School, University of Arkansas Law School, Detroit Law School, Pittsburgh Law School, University of West Virginia Law School, Buffalo Law School, Yale University Law School, Boston University Law School, Fordham University Law School, Columbia University Law School, New York Law School, National University Law School, Georgetown University Law School, University of Maryland Law School, University of Virginia Law School, Washington and Lee University Law School, Cornell University Law School, Washington University Law School, Cleveland Law School, Western Reserve University Law School, and St. Louis University Institute of Law.



Charles E. Hogg, Dean of the College of Law of the University of West Virginia, is engaged in writing a treatise on Common-Law Pleading primarily designed for use in his own classes, and which he hopes to make useful generally as a student's work on this subject. Dr. Hogg is also editing a new Code for the State of West Virginia, that will be published by the West Publishing Company, and he hopes to be able to give to the bench and bar of the state a modern and up-to-date Code. It will be thoroughly annotated, and contain several useful forms, based solely on statutes for which there is no cor-

responding form elsewhere to be found. It is his purpose to have a complete and practical index, that will in all respects meet the requirements of the profession at large and the wants of all others who will have occasion to refer to the Code. He also has in course of preparation a work on Law Procedure, designed for use in the two states of Virginia and West Virginia, presenting every phase of pleading and practice on the law side of the court. This will be a work heartily welcomed by the lawyers of the two states who know Dr. Hogg's capacity for law writing. Always an earnest student of the law, Dr. Hogg is well fitted for the task by a long and varied experience at the bar and the work he has already done as an author.



The College of Law of the University of Florida is in a flourishing condition and its prospects are very bright. The minimum requirement for matriculation this year is two years of high school training. Notice has been given, however, that next fall it will be three years, and in the fall of 1914 four years. The course of instruction at present extends through two years of thirty-five weeks. This period, however, is too short adequately to prepare students for the practice of law, and it is earnestly hoped that with the opening of the college in the fall of 1914 it will be extended to three years. The law library consists of nearly 3,000 volumes.

The faculty of the College of Law consists of the president and three professors. The latter devote their entire time to the work of the college. Special lectures are also given by members of the bench and bar, including the members of the Supreme Court of the state.

The prospects for a new building for the College of Law are most auspicious. It is practically certain that the present Legislature will make a good appropriation for this purpose. President Murphree, in his recent report to the Board of Control, says:

"The most conspicuous and the most immediate need is a home for the College of Law. * * * It is recommended that a building be erected providing classrooms, library, practice court rooms, etc., and that the sum of \$40,000 be appropriated—\$35,000 for the building and \$5,000 for heating and equipment. I should say once more that the need of this law building is most urgent at the present time, and if an appropriation for not more than one building can be made now, it is recommended that this law building be the first to be provided for."



Dean Eugene D. Saunders, of the Law Department of Tulane University, has been absent on leave, on account of illness, during the present session, and Professor D. O. McGovney, who has been secretary of the department for a number of years, was made

Acting Dean. Charles Payne Fenner, Professor of Louisiana Code Practice, has been Acting Professor of Civil Law, during the absence of Dean Saunders. Mr. Fenner is a B. S. of Virginia Military Institute, L. B. of Virginia University and LL. B. of Tulane University, and has had extensive practice in New Orleans. Judge Rufus E. Foster has been appointed to give a course on Federal Practice, two hours a week for a semester. He is a graduate of the Tulane Law School and is United States District Judge for the Eastern District of Louisiana. At a recent meeting of the Board of Administrators Assistant Professors Monte M. Lemann and Ralph J. Schwarz were made Professors of Law. Both are graduates of the Tulane College of Arts and Sciences and of the Tulane Law School. Mr. Lemann is also a graduate of the Harvard Law School, and Mr. Schwarz of the Columbia Law School. Both have been teaching at Tulane since the reorganization of the Law School in 1906. During the present session the quarters of the Law Department of Tulane University were entirely refurnished, the funds being contributed by individual lawyers and law firms of New Orleans.



The College of Law of the University of Southern California is closing the ninth year of its existence with an enrollment of 530. The school anticipates very few, and no important, changes in its corps of instructors. It has strengthened its course somewhat by adding a complete semester of Patents, Parliamentary Law, Insurance, and Admiralty Law, the latter subject because of the greater demand for instruction along that line growing out of the rapid development of Los Angeles harbor and its extended commerce.

The Practice Court work has been enlarged by adding six new courtrooms, making accommodations for twelve departments. These are in session every Tuesday night, and all presided over by members of the Los Angeles bar.

Additions have been made to the library, so that now the National Reporter System is supplemented by all the state reports. The library at present contains over 6,500 volumes.

Three debates were arranged this year with Eastern Law Schools, one with Northwestern University, and two with Drake University, Des Moines, Iowa. The annual debate with Northwestern School of Law is a permanent arrangement, this being the third to take place.



The question of introducing Casebooks for study by the law students in connection with the Hornbooks is under consideration in the Law School of the University of Notre

Dame. It has hitherto been the custom to cite the more important cases in class and refer the students to them, but it appears to be only in exceptional instances that they are studied with interest and profit under this system. Judge Arthur L. Hubbard followed the case system exclusively, and with notable success, when conducting his classes in Code Pleading and Evidence; and hence it may be said that "Casebook" study is by no means a novelty at Notre Dame. There is a difference of opinion, however, in respect to whether it should be generally introduced in connection with the study of the textbooks, which constitute the chief basis of instruction.

The Law Library of the University of Notre Dame has been placed in charge of Rev. Dr. Feucht, a man of notable erudition, and exceptionally well-informed in respect to library management. Under his direction it has been greatly enlarged and improved, special attention being bestowed upon such important features as light, ventilation, and equipment.



The St. Paul College of Law has reason to be proud of the record of its students who have taken the Minnesota Bar Examinations. Regular students of the school who have received their degree are admitted to the Bar on motion, but students who cannot comply with the entrance requirements of a high school education, though admitted to the school as special students, do not receive a degree. Such men have to take the Bar Examination. The records of the Examining Board show that over half of the first four positions in the Bar Examinations during the last eight years have been taken by such special students. At the last Minnesota Bar Examination, held in February, one of these students took the first position.

The total registration of the St. Paul College of Law this year is 201. The school is growing so rapidly that the trustees are looking around for larger quarters. During the month of April Professor Roger W. Cooley, of the University of North Dakota, gave a short course in Persons and Domestic Relations to the second-year students.



Ernest B. Conant, who has been a member of the Faculty of the University of Nebraska Law School since 1906, has resigned, and has accepted a professorship in the Law School of the University of the Philippines, located at Manila. Mr. Conant sailed on the army transport which left San Francisco on May 5th. The school year at Manila begins the last of June, and runs until March, the summer vacation coming in the hot months of April and May. The Law School of the University of the Philippines has a four-year course of instruction, with two years

of college work required for entrance. The instruction is all in English, and substantially the same text and case books have been adopted for class work as are used in the law schools of this country. Last year 240 students were enrolled in the Law School.



Judge Emlin McClain, who recently retired from the bench of the Supreme Court of Iowa, has been appointed a professor of law at Stanford University.

Judge McClain practiced law at Des Moines, Iowa, from 1873 to 1881, and was a member of the Faculty of Law of the University of Iowa from 1881 to 1900. From 1881 to 1887 he was Vice Chancellor, and from 1887 to 1892, Chancellor, of the Law Department. In 1901 he was elected to the Supreme Court of Iowa, where he served with distinction for two six-year terms. He is the author of treatises on Constitutional Law and Criminal Law, casebooks on Constitutional Law and the Law of Carriers, and several articles in the American Encyclopedia of Law and Procedure. He was a representative of the state of Iowa as Commissioner on Uniform Legislation, and has edited an Annotated Edition of Statutes of Iowa.

At Stanford, Judge McClain will teach Criminal Law, Carriers, Persons, Insurance, and Damages. He will also have charge of the moot court work.

Charles A. Huston, of the Stanford Law School, is spending the present year at Harvard. He will return to Stanford in the fall.

Frederic C. Woodward, of the Stanford Law Faculty, has been granted sabbatical leave for the first semester of the next academic year. With Mrs. Woodward he will sail from Montreal on May 30th and spend the summer and fall in England and France.



The University of Michigan Law School has added to the subjects already in its curriculum a group of what may be termed extralegal subjects, as follows: History of English Law, the Elements of Roman Law, History of Continental Law, Roman Law, and History of Legal Philosophy. These courses are given mainly for the benefit of graduate students in law and in Political Science. Undergraduates are not allowed to take them under ordinary circumstances.

It is probable that, beginning with 1915, the University of Michigan will require at least two years of college work for admission to the Department of Law. Such action has been recommended by the Law School Faculty, but has not yet been passed upon by the Regents.

During the present year the student body of the University of Michigan Department of Law is made up of members from forty-four

states and four foreign countries. One hundred and ten Colleges and Universities are represented among the students.



The 1913 catalogue of the New Jersey Law School has just been issued, and shows the largest enrollment since the school was organized. The total number of students attending school is now two hundred and two.

The most important change that has been announced during the year is the lengthening of the course to three years, and the adoption of the case system as the basis of instruction.

Announcement is also made that a beginning has been made in the preparation of a series of casebooks, the material for which is being gathered almost wholly from New Jersey cases. As most of the students in the school are residents of and intend to practice in New Jersey, it is believed that this series of casebooks will be of inestimable value to the student. The first one, on Torts, will be ready for use at the opening of the next school year in September.

Two members of the Faculty have been giving courses during the year at other Law Schools—President Currier at Columbia, and Professor Burnett at New York University. Mr. Stanley has been obliged to withdraw from his work this year, owing to business changes in his firm, and Mr. George D. Zahm, formerly Assistant Professor at the Yale Law School, is completing Mr. Stanley's course in Partnership. Mr. Oscar M. Bate, a graduate of Hamilton College and of the Harvard Law School, has been acting as Secretary to the school during the year. He is also engaged with President Currier in preparing the new casebook on Torts.

The recently announced results of the February Bar Examination in New Jersey shows that, of 15 New Jersey Law School graduates who took it, 13 were successful. The whole number taking the examination was 114, and of those 64 passed. The number of graduates from the school passing the Bar in New Jersey on their first examination has been over 75 per cent., both in 1911 and 1912. The average number of men not Law School graduates passing the Bar during that period has been less than 50 per cent.



What is believed to be perhaps the only Summer School course in the subjects of Mining and Irrigation Law in the country will be undertaken at the Summer Session of the University of Colorado, beginning June 23d, under the supervision of Dean Fleming and Professor Pease of the Colorado School of Law. To this may be added a course in Colorado Code of Civil Procedure, should a sufficient number apply. This is the first

year that any law subjects have been offered in the Summer School at this institution.

Professor William Bethke, formerly fellow and assistant in the Department of Political Science at the University of Minnesota, who has the subject of International Law at Colorado this year, was, during its late session, director of the Legislative Reference Bureau in the Colorado Legislature—another exemplification of the efforts being made to take the university to the people. Professor Bethke reports a busy time with the Colorado legislators at Denver.

The adoption of the rule requiring two years of college work for entering students at Colorado University Law School this year, of which notice was given three years ago, in addition to a high school education formerly required, did not have the effect of reducing the attendance to the extent anticipated.



Candidates for the degree of LL. B. at the University of West Virginia Law School must now have, in addition to the standard requirements of a high school education, one year of academic or college work, and must successfully complete the three-year course in law. In the law course considerable attention is paid to instruction in practice. The Practice Court extends through the entire year, is conducted by the Dean of the College, and conforms in every respect to the procedure obtained in the courts of original and appellate jurisdiction of the state. The course follows the prevailing practice in the two Virginias, where the distinction between law and equity is still observed. There is also a course on the drafting of legal documents, showing the essential requisites of each document and their significance. The student is also required to annotate the drafts of documents and to show the purpose for which they are used in cases submitted to them, just as they will be required to do in actual practice at the bar.



The College of Law of the State University of Kentucky has added to its faculty William E. Nichols, A. B., Georgetown University, and LL. B., University of Virginia, who will teach the subjects of Agency, Partnership, and Sales; also William H. Townsend, LL. B., State University of Kentucky, who will teach the subject of Domestic Relations. Edward C. O'Rear, Ex Chief Justice of the Kentucky Court of Appeals, James Garnett, Attorney General for the State of Kentucky, and Judge Thomas L. Edelen, of the Frankfort Bar, have been added to the list of special lecturers.

Many valuable additions have been made to the law library during the year, and provisions are now made for the purchase of

Halsbury's Laws of England and a full set of the English Reports, to be put in not later than July 1st next. The library will then contain more than 6,000 volumes.



A special course of lectures by Omaha practitioners was recently concluded at the Creighton College of Law, the subjects and lecturers being as follows: "The Lawyer's Opportunities and Responsibilities," T. J. Mahoney; "Preparation of a Case for Trial," C. J. Smyth; "Reform of Legal Procedure," J. W. Woodrough; "Evolution in Law Publishing," R. A. Daly; "The Trial of a Lawsuit," E. P. Smith; "The Art of Cross-Examination," F. H. Gaines; "Selection and Management of a Jury," John F. Stout; "Impressions of English Courts," Frank Crawford; "Trial of a Lawsuit," H. C. Brome.

Mr. John A. Bennewitz, former Professor of the Law of Real and Personal Property, resigned December 1, 1912, to accept a position in the Law Department of the Union Pacific Railroad Company.

The law library has been very much enriched during the present school year by a collection of books upon the history and philosophy of the law.

The practice work has been conducted this year under very favorable auspices, thanks in part to the school's good fortune last fall in securing the furniture, fixtures, and fittings of the seven courtrooms of the Douglas County Courthouse; one of the benches being of solid cherry and costing nearly \$7,000 to build.



In Minnesota, the graduates of the University of Minnesota Law School and the St. Paul College of Law are admitted to practice on motion. For some time these institutions have felt that granting a privilege of this sort to their graduates was the result of sectional pride and local partiality which does not correspond with good statesmanship. They therefore drafted a bill giving up this privilege and requiring all applicants to take the Bar Examination. This bill has passed the Senate and is now before the House. Another provision in it compelled every student taking the Bar Examinations to prove preliminary high school education. This clause was disapproved by the Judiciary Committee, and undoubtedly will be defeated in the House, as there do not seem to be twenty legislators who favor obliging an applicant to be fitted in anything else than knowledge of the law.



The attendance at the Law Department of the University of Montana has increased to such an extent that it has been compelled to

move into larger quarters, and it now occupies an entire floor of the library building. Owing to increased appropriations, two additional professors will be added to the Law School Faculty next year and substantial additions will be made to the library facilities. Montana Law School makes a great feature of Practice Court work, which is offered as a regular course during each of the three years of the Law School curriculum. The success and feasibility of Practice Court work in smaller law schools have been fully demonstrated. Dean Ballantine is to give a course in Contracts at the Summer Session of the University of Michigan.

Judge John B. Clayberg, University of San Francisco, is in Missoula this month delivering a course of lectures on Mining Law. Hon. F. C. Webster (Yale, 1873), ex-judge of the District Court, who resigned from the bench this spring after twelve years' service, has accepted an appointment as lecturer on Probate Proceedings.



The University of Virginia Law School is in a very flourishing condition at the present time, with a total enrollment of 245 students, from 35 states and one foreign country. The teaching staff numbers six professors and four assistants.

Of the three graduate assistants of last year, Ira S. Flory is now Professor of Law at Louisiana State University; C. W. Davis is engaged in the practice of law at Norfolk, Va.; and L. L. Oliver has entered the legal department of the Southern Railway Company.

The library of the Law School is being rapidly built up to meet the demands of the three-year course, which brought the addition of several new subjects to the curriculum, such as Bankruptcy, Roman Law, Code Pleading, Admiralty, Mining Law, etc.

No material changes have been made in the plan of instruction, except the addition of an advanced course in Legal Argumentation, which, supplemented by the courses in Brief Making and Forensic Debating, will probably absorb the work heretofore done in the Moot Court.

An unusual amount of interest is being taken by the students in political affairs, by reason of the important positions now occupied by graduates of the Law School, which numbers among its alumni President Wilson, Attorney General McReynolds, eight Senators, and fourteen Representatives in the present Congress, including Thomas S. Martin, James P. Clarke, John Sharpe Williams, and Oscar W. Underwood.



Dean Julien C. Monnet, of the Law Department of the University of Oklahoma, who filled the position of Acting President

of the University during the school year of 1911-12, is again devoting his entire time to the work of the Law School of that institution. He declined to accept the Acting Presidency until a definite understanding was had with the trustees that he should not be called upon to take the permanent appointment and give up the work of legal education, and adhered firmly to this determination in spite of much pressure to change it. The liberality of the state Legislature in providing a handsome \$125,000 building for this young Law School has made the possibility of developing a high grade law school most attractive. A like policy has already been begun toward building up a splendid library in keeping with the new building.



Judge C. U. Gantenbein, Dean of the Law Department of the University of Oregon, Portland, Or., whose term on the Circuit Bench recently expired, is now devoting a large portion of his time to the Law School. Walter H. Evans, lecturer on Negotiable Instruments, took office as District Attorney on January 1, 1913, and is thus numbered among the many instructors of the school who are also serving as public officers.

A society known as the Britannic Law Society was organized in the school March 24, 1913. Though the founders of the society are sons of the British Empire, any member of the Law School who is willing to abide by the rules of the society may become an active member. Studies in English Political and Legal History will be taken up in the form of lectures by the members. The first meetings are being devoted to a series of lectures on the first book of Blackstone, given by Mr. T. Walter Gillard, Secretary of the School.



Dean H. S. Richards, of the University of Wisconsin Law School, who has been spending a year abroad, will return to the school in the fall and resume his duties. During the absence of Dean Richards, Prof. Eugene A. Gilmore has been Acting Dean. The sixth annual summer session in law at the University of Wisconsin will be held during the summer of 1913. Professor Wm. E. Higgins, of the University of Kansas Law School, Professor James P. McBaine, of the University of Missouri Law School, and Oliver S. Rundell, formerly of the University of Wisconsin, will offer courses. In addition to these, Professors H. L. Smith and E. A. Gilmore of the regular faculty will teach. The courses are as follows: Contracts; Property, I; Administrative Law (Public Officers); Carriers; Damages; Equity Pleading and Practice; Extraordinary Legal Remedies; Partnership; Public Service Companies.

The Washington College of Law, Washington, D. C., has established a postgraduate course leading to the degree of Master of Laws. Students meeting the requirements of three years' study of law in that school, or holding the degree of LL. B. from other accredited institutions, are admitted to the course as candidates for the Master's degree. The course is largely devoted to researches in Corporation Law and kindred subjects, special attention being given to Public Service Corporations and Municipal Corporations. Railroad Law is studied with a great degree of minuteness, and in connection therewith special attention is given to Interstate Commerce Law. In addition to these the course covers instruction in International Law, Administrative Law, Roman or Civil Law, and History of the English Common Law. Each student must prepare and submit a thesis of from 5,000 to 10,000 words upon a subject approved by the faculty.



Prof. Thos. H. Somerville, Dean of the Department of Law in the University of Mississippi, has tendered his resignation, to take effect at the expiration of the current scholastic year in September next. Mr. Somerville has occupied the chair of law for 16 years, and has been dean of the school since 1906. He will resume the practice of law. Prof. Leonard J. Farley, of the Law Faculty, has been promoted to the deanship. Hon. Duke M. Kimbrough, of Oxford, Miss., has been called to the chair of law. Mr. Kimbrough is at present Chancellor of the First Judicial District of the State.



St. Louis Law School, Law Department of Washington University, has this year added to its full-time faculty Tyrrell Williams. Mr. Williams, after graduating from Princeton University, entered the St. Louis Law School, graduating in 1900. He has been engaged in the practice of law in St. Louis until his election to this faculty in 1912. The school now has four full-time professors. These four give their whole time to the school, but a considerable part of the teaching is still done by practicing members of the bar. The selection of Mr. Williams is in line with the settled policy of the school in choosing its faculty only from men who have had experience in the practice of law.



Beginning with the forthcoming session, 1913-14, the entrance requirements and the curriculum of the Law School of the University of Maryland are expected to be made to conform to the requirements of the Association of American Law Schools.

This institution has introduced an innovation in its teaching staff that is proving successful. It has added to the lecturing force a special instructor, whose duty it is to take up with the students of each of the classes the parts of the various courses which have been found to give the students the most trouble. The method employed is to give frequent talks and quizzes to small groups of the students, and the instructor also attends at the Law School for about an hour each day for the purpose of dealing with individual students who may come to him for advice or assistance in connection with their studies. For the past two years this supplementary work has been done by Mr. Samuel Want, whose position has been officially designated as "Students' Adviser and Director of the Library."



The John Marshall Law School, of Chicago, will offer this fall a four-year law course along with its present three-year course. The four-year course will be required of all candidates for the LL. B. degree who have not had a four-year high school course or its equivalent. The Supreme Court rule of the state requires only three years of high school work, but the school has joined in a movement to raise this standard, which was adopted when many high schools of the state gave but three years of work.

It was with this end in view that the school added two years ago a Pre-Legal class for those below the present standard. This class during the present year has been attended by forty different students.



John D. Lawson, of the University of Missouri Law School, sailed for Europe at the beginning of the spring semester, for further study of Criminal Procedure in France, Germany, and England. He will return to the University this fall.

During the coming summer Professor J. C. McBaine is to teach Extraordinary Legal Remedies in the summer session of the University of Wisconsin, and Professor Charles K. Burdick is to teach Agency and Domestic Relations in the summer session of Columbia University, New York City.



Willis Vickery, Judge of the Superior Court, Cleveland, Ohio, and for many years Dean of the Cleveland Law School, is the possessor of many thousand volumes of Shakespeare's works of all shapes, sizes, and conditions. They represent the thoroughness and success with which Judge Vickery has conducted his only hobby—book collecting. It is said Judge Vickery has the largest and finest collection

of Shakespearean works in the United States. The value of the Vickery collection has been estimated at \$75,000.



The students of the Law School of the University of Arkansas will again have the benefit of the instruction of Col. Geo. W. Murphy, who, after a year's rest, is again lecturing on the law of Evidence. Col. Murphy is an Ex Attorney General of the state, one of the oldest members of the bar, and one of the oldest lecturers in the school in point of service.

As an extension of the Practice Court work, part of the time has been devoted to the writing of precedents for judgments, decrees, and interlocutory orders. This has been found to be a very profitable part of the work, and one in which the students take considerable interest.



Dean W. E. Walz, of the University of Maine College of Law, has been appointed to serve as an active and honorary member of the National Committee on the Celebration of the Hundreth Anniversary of Peace among the English-Speaking People, to be held in New York. The other members of the committee for Maine, appointed at the same time, are Hon. George L. Crossman, former Mayor of Saco and President of the Maine Peace Society, President A. J. Roberts, of Colby College, President George C. Chase, of Bates College, and Mrs. Frederick E. Boothby, of Portland.



Francis H. Bohlen, Professor of Law, University of Pennsylvania, has been appointed Secretary of the Industrial Accidents Commission of Pennsylvania, which is engaged upon a careful investigation of the labor conditions of Pennsylvania. He is drafting a Workmen's Compensation Act, which is now before the Legislature.

John W. Patton, who resigned his position on the Law School Faculty on September 1, 1912, has been succeeded by David Werner Amram, who now has charge of all the work in Pennsylvania Practice. Professor Amram, since 1903, has acted as Referee in Bankruptcy, to which position he was appointed by Judge John B. McPherson, of the United States District Court, upon the recommendation of the leaders of the bar and of many of the judges of the Common Pleas and Orphans' Court.

The current year has been the most successful in the history of the American Central Law School at Indianapolis. The enrollment has been larger than ever before, and the individual attendance and class

work better. The practice course has been particularly interesting. The annual alumni banquet on Washington's Birthday was well attended. Unique menu cards were furnished in the form of imitation briefs. Steps are being taken to extend the course from two years to three, beginning September, 1914. A summer course of ten weeks will probably be given, commencing June 15, 1913, and covering several junior subjects.



Ex-President Taft reached New Haven on April 1st, to enter upon his duties as Professor at Yale. He was received by the students at the railroad station and escorted to the University, where he delivered a short address. He holds the chair of Professor of Constitutional Law in the Law School.



Last year, the course of instruction in the Yale Law School was revolutionized, and the case system which before had been used to a very considerable extent, but largely in connection with text-books, has supplanted the combined method of instruction by case and text, and is now practically the only method of instruction at Yale.



The University Senate of the University of Illinois is considering the recommendation of the Faculty of the Law School providing for two years of college work as a prerequisite of registration in the Law School. It seems likely that the proposed new rule will be put into effect by the University authorities.



The Webster College of Law is nearing the close of a very successful first year. The total matriculation to April 10, 1913, was 128.

Hon. James Hamilton Lewis, the President of the Webster College of Law, was elected United States Senator from Illinois on March 26, 1913.



C. G. Vernier, of the University of Illinois Law School, has recently been elected Secretary of the Illinois Society of the American Institute of Criminal Law and Criminology, at Springfield.



The new Law School Building at the University of Nebraska is receiving its finishing touches, but is as yet unfurnished, and will not be ready for occupancy before the beginning of the next academic year.

The lawyer had a somewhat difficult witness, and finally asked if he was acquainted with any of the men on the jury. "Yes, sir; I know more than half of them."

"Are you willing to swear that you know more than half of them?" demanded the attorney.

"Why, if it comes to that, I am willing to swear that I know more than all of them put together."



The *Green Bag* is authority for this story: A certain witness in a case, where a boundary was in dispute, animated with a laudable desire to make things smooth, turned to the judge with the confidential remark: "You see, your honor, that the house was always cattawampus." "What did the witness say?" asked the judge, not quite sure that he heard aright.

Thereupon a smart young lawyer jumped up and explained with a patronizing air, half for the judge who wouldn't understand plain English and half for the witness who couldn't choose more elegant language: "Your honor, the witness said cattawampus, but what he meant to signify was that the house was built snatchwise."



A lawyer, who was arguing a technical point before Supreme Court Justice Gerard in New York City, when about 50 more cases were waiting to be heard, asked the court: "How will I get this question before the Appellate Division, your honor?"

"You might take it up in the subway," remarked the judge wearily, as he called the next case.



"I'm certain, William," she began
 "When Johnny grows to be a man,
 And his mind's bias finds expression,
 He'll choose the medical profession.
 Last night I noticed, at the table,
 How thoughtfully he cautioned Mabel
 About the hurtfulness of pie."

"His talents," William answered, "lie,
 Judging from what I heard and saw,
 Rather along the lines of law;
 Though all he told her might be true,
 He ate his pie and Mabel's, too."

—Lippincott's.



The attorneys for the prosecution and defense had been allowed fifteen minutes each to argue the case. The attorney for the defense had commenced his argument with an allusion to the old swimming hole of his boyhood days. He told in flowery oratory of the balmy air, the singing birds, the joy of youth, the delights of the cool water—

And in the midst of it he was interrupted by the drawling voice of the judge: "Come

out, Chauncey," he said, "and put on your clothes. Your fifteen minutes are up."—*Success*.



In the bankruptcy court a witness was asked the amount of his gross income. "Me gross income, is it? Sure, an' I'd hae ye know that I have no gross income. I'm a fisherman, an' me income is all net," was the astonishing reply.

The cook used the judge's private bathtub, confessed her fault, and was reprimanded with severity.

"I don't object so much to you using my tub, but I dislike to believe that you would do anything behind my back that you wouldn't do before my face."—*National Monthly*.



Legal Conundrum.—Why is the modern skirt like an involuntary assignment in bankruptcy?

No charge is made to students in law schools for
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The American Law School Review

An Intercollegiate Law Journal
A. F. MASON, *Editor*

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No. 7

The Social Importance of Proper Standards for Admission to the Bar

By HON. WILLIAM H. TAFT
Professor of Law, Yale University

(A paper read before a joint session of the Association of American Law Schools and the Section on Legal Education of the American Bar Association at Montreal, Canada, September 3, 1913.)

A GREAT FRENCH JUDGE truly said that the profession of the law was "as old as the Magistrate, as noble as Virtue, and as necessary as Justice." The importance of having a Bar, the members of which are sufficiently skilled in the principles of law and the procedure of the courts, properly to advise laymen as to their rights, and the method of asserting or defending them, and to represent them in judicial controversies, I need not dwell upon. It has been the habit in many states to regard the practice of the law as a natural right, and one which no one of moral character can be deprived of. Such a view of course ignores the importance of the profession to society and looks at its practice only as a means of earning a living. Laymen

can readily be made to see that society should be protected against the malpractice of the medical profession and surgery by men who know nothing of disease or the effect of medicine or the handling of a surgical instrument. It is therefore comparatively free from difficulty to secure laws prescribing proper educational qualifications for those holding themselves out as physicians or surgeons. The danger to society of the misuse of the power which a lawyer's profession enables him to exercise is not so acutely impressed upon the layman until he has had some experience in following bad advice. A legal adviser cannot ordinarily injure his client's bodily health, but he can lead him into great pecuniary loss and subject him and his family to

suffering and want. The more thorough the general education of one who proposes to be a lawyer, the more certainly his mind will be disciplined to possess himself of the principles of law and properly to apply them. There is a spirit of hostility manifested by some courts and lawyers, and some who are not lawyers, to the suggestion that a fundamental general education is necessary to the making of a qualified member of the legal profession. In Indiana the Constitution impliedly forbids the imposition of examination for admission to the Bar. The argument is: "Look at Abraham Lincoln. He never had any education of any sort. He educated himself, and note his greatness both as a lawyer, a statesman, and a man." Such an argument would do away not only with the necessity for education at the Bar, but the necessity for schools or colleges of any kind. The question is not whether exceptional men have made themselves learned men, educated men, and great lawyers without the use of schools, academies, colleges or law schools, but the question is by what means are we likely to produce the best average members of the profession. By what means are we most likely to make them skilled and able and useful in the office for which the profession is created. Certain law schools in the country have imposed the necessity for a collegiate education upon intending lawyers before they shall begin the study of their profession. In the medical profession, schools of a similar standard require, after the bachelor's degree, a study of four years. In the law schools a study of three years is now generally required, and in many states the same period has been fixed as the necessary period of preparation for the Bar examinations. It is said this will exclude many worthy young men who

would aspire to the law. As the reason of the profession for being is to serve society, the interest of society is the point from which we must approach the question, and but little consideration should be given to the welfare of those who would like to practice law and are not fitted to do it well. The graduates of colleges are in number greatly more than sufficient to supply the needs of the clerical, the medical, and the legal professions, and there is no danger that there will be any dearth of lawyers of good material because a heavier burden of preparation is required of them. The view that the profession exists solely as a livelihood creates a demand for law schools, furnishing the easiest and shortest way for their students to acquire the temporary information needed to pass the required examinations. Such schools are cramming factories, with no thought to the broad legal education which students should bring to the practice after they are admitted to the Bar. They confer only a smattering of the law and only a transient familiarity with the subjects upon which they are examined. Men who are thus prepared may become good lawyers, but, if they do, it will be because of their natural mental capacity and the education that they give themselves afterwards, and not because of any basis of legal learning they acquired in such schools. For the good of society, the standards of legal education ought to be made higher and a broad collegiate education before the study of the law should be insisted upon as the *sine qua non*.

In most states the question of the admission to the Bar is given to the Supreme Courts. It ought to be possible, therefore, to secure, through such good and eminent lawyers, a proper standard for the making of new lawyers. They ought, of all men, to appreciate in the

highest degree the benefit in the administration of justice of requiring the thorough preparation for the practice of the profession. They could impose a standard for preliminary and fundamental education, and then for the education in law. Such an association as this should have more influence with them than it ever can have through legislatures or upon the people, for it is dealing with its own. Of course the judges do not generally prepare the questions for examination or mark them. They delegate this to a committee of lawyers. When we find in one of the great states of the Union a committee of examination that imposed questions based on cases taken from reports of its own state, some of doubtful authority, and gave no credit for answers which differed from the decisions of the courts, however good the reasons, we are not surprised to learn that some of the best-prepared students from first-class law schools were rejected, and that applicants with education in the law much less thorough were admitted who pursued the course of studying the special character of previous questions and cramming on the answers to them from a book prepared by one of the committee. This book shows not a few instances in which the answers required were hardly sustained by good authority, even in the particular state. Some features of this bad system have been changed. The reform should be more radical. No court that knowingly permits such a system to remain in vogue can escape criticism. Examinations of this kind commercialize the practice of the law more than any other one. Those who come to the Bar by a mere trick of memory, and without thorough absorption of legal principles, are not likely to improve the tone of the practice to which they have succeeded by such means. I

am not, however, sufficiently familiar with the details of state bar examinations, or with the curricula of law schools, to be able to write an informing paper on them, and I am glad to know that I am to be followed by one so much better qualified to speak on this subject.

What I wish to dwell upon especially to-day is the influence of a proper standard for admission to the Bar on another office of lawyers than that of advising and representing clients. We get our judges from the Bar, and we add to the education of our judges when they are on the Bench by the Bar. It is the tone of the Bar, therefore, and the ability and learning of the Bar, that necessarily affect the learning and standards of the Bench. The influence of a great Bar to make a great court and to secure a series of great decisions, every one familiar with judicial history knows.

The function of judges is to interpret constitutions and statutes, and apply and enforce them, and also to declare and apply that great body of customary law known as common law which we received from past generations. Theoretically, they ought to interpret the exact intention of those who established the constitution, or who enacted the legislation, and they ought to apply the common law exactly as it came to them. But frequently new conditions arise that those who were responsible for the written law could not have had in view, and to which existing common-law principles have never before been applied, and it becomes necessary for the court to make new applications of both. The power which the court thus exercises is said to be a legislative power, and it is urged that it ought to be left to the people. That it is more than a mere interpretation of the legislative or popular will, and in the case of the common law that

it is more than a mere investigation and declaration of traditional law, is undoubtedly true. But it is not the exercise of legislative power as that phrase is used. It is the exercise of a sound judicial discretion in supplementing the provisions of constitutions and laws and custom which are necessarily incomplete or lacking in detail essential to their proper application especially to new facts and situations constantly arising. Then, too, legislation is frequently so faulty in proper provision for contingencies which ought to have been anticipated that courts cannot enforce the law without supplying the defects and implying legislative intention, although every one may recognize that the legislative body never thought anything about the operation of the law in such cases and never had any intention in regard to them. Neither constitutional convention nor legislature nor popular referendum can make constitutions or laws that will fit with certainty of specification the varying phases of the subject-matter sought to be regulated, and it has been the office of courts to do this from time immemorial. Indeed, it is one of the highest and most useful functions that courts have to perform in making a government of law practical and uniformly just. You can call it a legislative power if you will, but that does not put you one bit nearer a sufficient reason for denying the utility and necessity of its exercise by courts.

Of all people in the world who ought not to be heard in objection are the advocates of the initiative and referendum as a means of legislation. Legislatures and constitutional conventions have been bad enough in the enactment of measures inconsistent in themselves, and full of difficulty for those charged with their enforcement; but now it is proposed to leave the drafting of laws to individual

initiative, and to submit them to popular adoption without any possibility of correction and needed amendment, after discussion which is always afforded in the representative system. The puzzles in legislation now presented to courts by this new method of making laws can be better understood by reading some of the perspiring efforts of the Supreme Court of Oregon. Instead of dispensing with courts, this purer and directer Democracy is going to force upon judicial tribunals greater so-called legislative duties than ever. Of course legislatures and the people have always the power to negative the future application of any judicial construction of a constitution or a law, or any declaration of a common-law principle, by amendment or new law. The practical impossibility of making laws that are universally applicable to every case has thrown upon the courts the duty of supplying the deficiency either by construction of written laws or constructive application of the common law. This discretion of courts is guided and limited by judicial precedents. These precedents form a body of law called judge-made law by those who would attack it; but it is better to have judge-made law than no law at all. Indeed, the curative and lubricating effect of this kind of law is what has made our popular governmental machinery work so smoothly and well. I cannot refer at length to the now much-mooted question of the power of the courts to refuse to recognize legislative acts which are beyond the permissible discretion of the legislature in construing its own constitutional authority. I can only say that the power has been exercised for one hundred and twenty-five years, and, unless the courts continue to retain it, individual rights and every interest of all the people will come under the arbitrary

discretion of a constantly changing plurality of the electorate, to be exercised by varying and inconsistent decisions of successive elections.

But, however necessary it is to intrust such discretion to the courts, we must recognize that its existence is made the basis for a general attack, by professed reformers of society, upon our judicial system, and that this attack is finding much sympathy among the people. There are good grounds for criticising our present administration of justice in the law enforcement of the criminal law and in the high cost and lack of dispatch in civil litigation.

These defects are not all chargeable to the courts themselves, by any means. The lax administration of the criminal law is due in a marked degree to the prevalence of maudlin sentiment among the people and the alluring limelight in which the criminal walks if only he can give a little sensational coloring to his mean or sordid offense. Then the state legislatures, responding perhaps to a popular demand, and too often influenced by shallow but for the time being politically influential members of our own profession, devise every means to deprive the court of its power at common law to control the manner of trial and to assist the juries, but not to constrain them, to right conclusions. Codes of procedure of immense volume and exasperating detail keep litigants "pawing in the vestibule of justice" while the chance of doing real justice fades away. Then, too, unnecessary opportunity for appeals and writs of error and new trials is afforded by statute, and the litigant with the longest purse is given a great advantage. More than this, many questions that ought to be settled by administrative tribunals with proper authority have been thrust upon the courts. This has had two ef-

fects. It involves the courts in quasi-political and economic controversies that they ought not to be burdened with, and that necessarily expose them to criticism as being prejudiced. Second, it takes up the time of the courts in executive matters and delays dispatch of legitimate judicial work. The creation of the interstate commerce commission, of state public utilities commissions, of boards of conciliation and arbitration in labor controversies, of commissions for fixing compensation for injured workmen, and of other executive agencies for the determination of issues involved in proper governmental regulation and exercise of the police power, are lifting much from the courts. Then our association and many state associations are zealously and successfully working to induce legislatures and courts by statute and rules to simplify procedure and make it a vehicle of quick justice at little cost.

But the lax administration of the criminal law and the cost and delay of civil litigation are not the special objects of attack by social reformers. Their fire is directed against what they call the legislative power of the courts that I have described. This they contend is now being exercised to defeat measures essential to true social progress by reactionary judges. Let us trace out the reasons for this antagonism, and perhaps in them we can find the true solution of the difficulty so far as there is any real substance in their complaint.

In the Federal Constitution there were embodied two great principles: First, that the government should be a representative popular government, in which every class in society, the members of which have intelligence to know what will benefit them, is given a voice in selecting the representatives who are to carry on the government and in determining its

general policy. On the other hand, the same constitution exalts the personal rights and opportunities of the individual, and prescribes the judicial machinery for their preservation against the infringement by the majority of the electorate in whose hands was placed the direction of the executive and legislative branches of the government. The common-law rule was followed, by which each individual was given independence in his action so long as that independence did not infringe the independence of another. This has given the motive for labor, industry, saving, and the sharpening of intellect and skill in the production of wealth and in its reuse as capital to increase itself. The material expansion of our country, unprecedented in history, would have been utterly impossible without it. When the constitution was adopted there was not only legal independence of the individual, but actual independence in his method of life, because he could and did produce almost everything that was needed for his comfort in the then standard of living. We have now become a people with an immense urban population far from the source of necessary supply, and therefore we have become far more dependent on each other that life may go on and be enjoyed. While it is undoubtedly true that the living of the average individual is far more comfortable than it ever was, we have now reached a point in the progress of our material development when we are stopping to take breath and to make more account of those who are behind in the race. We are more sensitive to the inequality of conditions that exist among the people and the enjoyment of the comforts of life. We are pausing to inquire whether by governmental action some changes cannot be made in the legal relations between the social classes

and in the amelioration of oppressive conditions affecting those who in the competition between individuals under existing institutions are receiving least advantage from the general material advance. It is essential that our material expansion should continue to meet the demands of the growing population and to increase the general comfort. Were we to take away the selfish motive involved in private property we would halt, stagnate, and then retrograde, the average comfort and happiness in society would be diminished, and those who are now in want would be poorer than ever. The trend of those who would improve society by collectivist legislation is toward increasing the functions of government, and one of the great difficulties they have to meet is provision for the rapidly increasing pecuniary burden that this entails. Municipalities and states that have attempted something of this kind are finding that their credit is exhausted and their tax resources are not sufficient. Whatever the changes, therefore, we must maintain for the sake of society our institutional system of individual reward, or little of the progress so enthusiastically sought can be attained. It is not alone constitutional restraints that limit thoughtless, unjust, and arbitrary popular excesses, but also those of economic laws and the character of human nature, and these latter work with seemingly cruel inevitableness that ought to carry its useful lesson home.

The social reformers contend that the old legal justice consisted chiefly in securing to each individual his rights in property or contracts, but that the new social justice must consider how it can secure for each individual a standard of living and such a share in the values of civilization as shall make possible a full moral life. They say that legal justice

is the removal of all those restrictions on the free action of an individual which are not necessary for securing the like freedom on the part of his neighbors, while social justice is the satisfaction of every one's wants so far as they are not outweighed by others' wants. The change advocated by the social reformers is really that the object of law should be social interests and not individual interests. They unjustly assume that individual rights are held inviolate in the interest of the individual to whom such rights are selfishly important and not because their preservation benefits the community. On the contrary, personal liberty, including the right of property, is insisted upon because it conduces to the expansion of material resources which are plainly essential to the interests of society and its progress. We must continue to maintain it whether our aim is individualistic or social. As long as human nature is constituted as it is, this will be true. When only altruistic motives actuate men, it may be different.

But we must recognize the strong popular interest in the sociological movement and realize the importance of giving it a practical and successful issue. We are not tied to the defects of the past or present, and we ought to be anxious to guide the proposed reforms so that we shall secure all the good possible from them without ignoring the inestimable boon of experience we have inherited from centuries of struggle toward better things.

The Supreme Court of the United States has given many evidences of its appreciation of the changes in settled public opinion in respect to the qualification of individual rights by the needs of society. Its definition or rather lack of definition of the police power, and its proposed method of pricking out its limi-

tations in accord with predominant public opinion, is an example. Indeed, many other instances of the infusion of social ideas into the law by construction of remedial statutes and by adjustment of common-law principles to cases of social justice could be cited. It is noteworthy that this is most evident in the highest of our courts with judges of greatest experience, ability, and learning in fundamental jurisprudence and of statesmanlike constructive faculty. It is through discriminating and far-sighted legislators and through great and learned judges that we can safely and surely achieve the social changes and reforms within the practical range of enforceable law. It must be remembered that with men as they are, government and law cannot make every change in society, however desirable it may be. Law which is unenforceable or ineffective is worse than none. There are zones in the field of social relations in which progress can only be made by the moral uplift of the individual members of society, and in which the use of legal compulsion is worse than futile.

Nevertheless, many who are infused with the new ideas are prone to look askance upon what they call the individualistic system, and are quite willing to do away with the constitutional restraints and the teachings and influence of the common law upon which such a system must rest. Relying upon the willingness of inflamed majority to possess themselves of advantages over a minority, or the individual, they advocate remedies that tend toward confiscation.

Attempts made to carry out such ideas have, of course, startled the owners of property and capital to measures of defense and leading members of the Bar have ranged themselves in support of these measures. Indeed, in the enor-

mous material development the services of the profession have been invoked, and often, to protect methods that were indefensible. The profession has suffered from not having that independence of clients that the English barristers enjoy, in which the relation between the two is temporary and but for a single cause. Such a relation does not produce that widespread popular impression of complete identity of the professional advocate and adviser with the client, especially the corporate client and all its interests and plans. For these reasons our profession at present is under suspicion of being subsidized by our relation to the property of our clients, and of not being able to discuss without prejudice the betterment of present conditions in society. Those who are advocating these reforms propose, therefore, in the future largely to dispense with lawyers, largely to dispense with constitutional restraints, and to place their whole confidence in the direct action of the people, not only in the enactment of laws, not only in their execution and enforcement, but also in the judicial function of determining justice in individual cases. This hostility to our profession, while it is natural and can be explained, is unjust. We are as intelligent, generous, patriotic, self-sacrificing, and sympathetic a class as there is in society. We are not opposed to progress, real progress. Moreover, we know how to do things, and in the end no successful legal step forward will be made without our aid and shaping. We are far from lacking in a desire to improve social conditions. We recognize the inequalities existing between social classes in our communities, and agree to the necessity of new legal conceptions of their duties toward each other. But we have been driven by circumstances into an attitude of opposition. The proposals

made for progress have been so radical, so entirely a departure from all the lessons of the past, and so dangerous to what we regard as essential in preserving the inestimable social advances we have made since the Christian era, that we have been forced to protest. The result is that at present the militant social reformers and the lawyers are far apart. We don't talk exactly the same language. It is enough to answer our expressed opinions for them to say that we think and talk as lawyers.

What then is it necessary for us to do in this coming crisis, for it is a crisis in the life of courts and administration of justice. Many of the social reformers are oblivious of the lessons to be derived from experience in enforcement and operations of laws upon society. They do not realize the necessity for making the many different rules of law fit a system that shall work. They bring to the repair of a mechanism of interlocking parts, rude and unsuitable instruments. Nothing could more reflect upon their crude conception of judicial procedure than the proposition of a recall of judicial decisions. Social changes are not to be successfully made by a cataclysm, unless present conditions are as oppressive as those which caused the French Revolution. To be valuable they must come slowly and with deliberation. They are to be brought about by discriminating legislation, proceeding on practical lines and construed by courts having an attitude of favor to the object in view.

I have spoken little to my purpose if I have not made clear the necessity for broadening much the qualification of the general body of our judiciary to meet the important and responsible requirements that the present crisis in our community has thrust upon them. Their coming duties call for a basic knowledge of gen-

eral and sociological jurisprudence, an intimate familiarity with the law as a science, and with its history, an ability to distinguish in it the fundamental from the casual, and constructive talent to enable them to reconcile the practical aspirations of social reformers with the priceless lessons of experience from the history of government and of law in practical operation. How can this be brought about? Only by broadening the knowledge and studies of the members of our profession. It is they who make the judges who contribute to their education and who help them to just, broad, and safe conclusions.

What we need now is to rouse our profession to speak out. We must be heard in defense of the good there is in our present society, and in pointing out the social injury which a retrograde step may involve. But we must also put ourselves more in touch with the present thinking of the people who are being led in foolish paths. We must study sociological jurisprudence. We must be able to understand the attitude of the sociological reformer. We must show our sympathy with every sincere effort to better things.

What the people need in respect to this matter is light, and the profession engaged in administering law, and in promoting just judicial conclusions, must contribute their valuable assistance in giving it. In so far as the conditions in society are new, in so far as its needs are different from what they seemed to be at the time of the adoption of the constitution, or as they were recognized under the common law, embodied in a century of our judicial decisions, they should be studied by the profession. We should seek to know exactly what are the conditions that are sought to be remedied.

We should be willing to meet them in seeking to remedy every condition that it is possible to remedy consistently with the maintenance of those principles that are essential to the pursuit of material progress and the consequent attainment of spiritual progress in society and to permanent popular and peaceful government of law.

The working of the problem presented is not the task of a year. It may require a generation or more. We must prepare our successors, the future American Bar, to meet the demand.

Every law school should require those who are to be admitted to its halls to have a general education furnishing a sufficiently broad foundation upon which to base a thorough legal education. That general education ought to include a study of economics and a study of sociology, and the curriculum of every law school should include a close study of the science of general and sociological jurisprudence as a basis for the study of the various branches of our law; and this raising of law school standards should meet a sympathetic response from Supreme Courts in requirements for admission to the Bar. Then the members of the Bar will come to the discussion of social remedies in courts, in the halls of Congress, and in legislatures, and in appeals to the people, properly equipped, and will bring the controversy down to a practical issue, and the fight can be fought out on a common ground. The valuable lessons of the past will be given proper weight and real and enduring social progress will be attained. We shall avoid, then, radical and impractical changes in law and government by which we might easily lose what we have gained in the struggle of mankind for better things.

The Control Exercised by the Inns of Court over Admission to the Bar in England

By WILFRID BOVEY

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(A paper read before the Section on Legal Education of the American Bar Association at Montreal, Canada, September 2, 1913.)

THERE is perhaps no order which more jealously guarded its dignities or more carefully watched over the admission of new members to share in its privileges than has the English Bar, and the result is the unquestioned position of its members in the social order of to-day.

In examining the manner in which admission to the Bar is obtained, it cannot fail to be impressed upon the inquirer that not only must the applicant show himself intellectually capable of joining a profession which has at all events in legal theory a monopoly of learning in the law, but he must be personally worthy of becoming one of a class of recognized dignity and importance.

Some well-known privileges of a barrister show this estimation.

He has the rank of esquire, he has, with certain exceptions, an exclusive right of audience before certain inferior courts and the High Court of Justice, and, with no exception at all, before the Court of Appeals and the House of Lords. His opinion bears such weight that, for example, an appeal cannot be taken to the House of Lords unless the counsel who sign the petition also certify that it is a reasonable one. He has the right of authenticating the report of a case by his signature, and, last but not

least, he is exclusively eligible for the highest judicial positions.

The power of the Inns of Court to determine who shall be admitted to their membership is therefore of the first importance and it is absolute and unencumbered.

Whether the judges, who seem, as late as the seventeenth century,¹ to have been able to select those who might speak in their courts, had any regard for the character of the would-be practitioner we do not know, but it is certain that the period of study and probation through which the young lawyer had to pass was long enough to dishearten any but the most persistent and persevering seeker after learning.

The four Inns of Court, the Inner Temple, the Middle Temple, Lincoln's Inn and Gray's Inn, have existed since very early times.

We have no record of their founding and no trace of any organization. Unlike the colleges of Oxford and Cambridge, which had their beginning in grants and charters, the Inns of Court were institutions when we first hear of them at the end of the thirteenth century.² "They are not corporations and have no constitutions and charters from

¹ Dugdale, *Or.* pp. 311 to 324.

² Ordinance of Edward I, 1290 and 1292.

the Crown." * They are defined by Lord Halsbury as "voluntary unincorporated societies of equal rank and status, independent of the state."

In the early days of these colleges the instruction seems to have been somewhat varied, the curriculum including not only law and theology but music, singing and dancing, subjects which the modern student hardly goes to college to learn, though he generally learns them at college.

We do not hear of barristers before the fifteenth century, but of apprentices (*apprenticii ad legem*) and sergeants (*servientes ad legem*). The degree of sergeant marked the right to practice, and the novice, before he had earned this, was called an apprentice, a name perhaps indicating his general unimportance. The sergeants indeed were long the senior order of jurists, and although later they had to share their exclusive right of audience with the barristers, until the year 1875, they alone were capable of being created judges.

In whatever manner the Inns of Court arose, we know that the lawyer, before he became worthy of audience in court, must share in the college life of his fellow students, "usually in commons," and must pursue learning by following readings on statutes, by practicing the putting of cases, and by attending moots. True, to-day there is but a trace of this college life, but the community of life and labor in former years has surely had a great share in the creation of worthy professional ideals.

The moots were conducted with all the formalities of actions in the court of common pleas. The seniors took the place of judges and occupied the bench, whence even now they are called "benchers," or more formally "masters of the

bench," and they had then the same complete and unquestioned authority over the other members of their Inns which to-day they still hold and exercise.

The next in rank, who sat outside the bar and carried on the argument, were known as "masters of the utter (that is, outer) bar," or utter barristers, while the juniors, who had their places within the bar, sat on forms and read or recited the pleadings, were called "masters of the inner bar" or "inner barristers." Seven years of such life and study must elapse before the inner barrister could attain the degree of utter barrister, and even then he would not be admitted to audience by the judge until he had passed through three years of probation in "exercises of learning." †

The source of the judge's authority in this matter is not clear, but when we remember what arbitrary and imperious creators of law were our then justices, whose chief aim was the increase of the power of their courts, we can quite understand that, if the control over the education of the lawyer was declared by them to be a prerogative of their own, the wise student would hardly say them nay.

It is certain in any event that the judges originally had and exercised this control, both as being visitors of the Inns and by limiting the right of audience in their courts, but at an early date their power was delegated to the benchers of the several Inns. In theory, however, even to-day, the control vested in the bench or parliament of the Inns is so vested by virtue only of such delegation. Mr. Underdown in a lecture on this subject states that "the Lord Chancellor and the judges had and still retain their rights to act as visitors," and Lord Mansfield in *Rex v. Gray's Inn* (Doug-

* Per Lord Mansfield, *Rex v. Gray's Inn*.

† Dugdale, Or. 812.

las, 353), speaking of the Inns of Court, says: "But all the power they have concerning admission to the bar is delegated to them by the judges and in every instance their conduct is subject to their control as visitors."

Gradually the fire of enthusiasm for learning which illuminated the Middle Ages died down. The crowds of students at the colleges and universities became smaller, and the change manifested itself also at the Inns of Court.

By the reign of Charles the Second we find that the moots had been discontinued. The additional probationary period of three years required of the utter barrister disappeared. The term in residence of the student was reduced to five and later to three years, and after this residence the call from the benchers of his Inn was the only prerequisite to a barrister's right to practice. These requirements still remain, and still, subject to the control possessed, although not exercised, by the judges, the right to admit is vested in the benchers of the several Inns, and the courts cannot inquire into the conduct of the benchers. Abbott, C. J., states: "I am of opinion that this court has no power to compel the benchers of this society to permit any individual to become a member of the society or to assign any reason why they do not admit him." *

So has grown up the control of the benchers of the Inns over admission to the Bar, and in the study of the sources and objects of this control we realize how the independence of the Inns of Court and the permanence of their institutions have kept up the standards of the calling whose honor it is our duty to guard.

Having at such length as the scope of

the present paper will permit glanced at the history of the Inns, let us see how their control is exercised at the present day.

Of the three classes, benchers, barristers and students, who constitute each Inn, the benchers, as already indicated, are still, in virtue of the authority delegated to them by the judges, exclusively competent to determine the desirability of candidates for call, their decision cannot be revised by any court, and as a matter of practice will not be revised at all.

So far, however, as concerns the intellectual capacity of a student to exercise his profession on being called, the four Inns have in their turn mutually intrusted the decision to the Council of Legal Education, which is a body of twenty benchers, five being chosen by each Inn. Furthermore, by the same consolidated regulations which define the duties of this Council the four Inns adopt a uniform standard for determining the acceptability, other than intellectual, of applicants for admission as students.

The would-be student at the time of his application must not be carrying on any of certain proscribed occupations. Needless to say he must not already be a barrister, nor must he be a solicitor, a writer to the Signet, or a notary public. He must not be a land agent, a patent agent, a clerk in any court, or an engineer, and he will be required to take a declaration that he is not engaged in any of these occupations or a similar one.

The student from a colonial university must go armed with a certificate of good character from his principal, and the British student is required to be seconded by similarly independent and responsible persons.

Lastly, the candidate must have passed one of certain examinations held by uni-

* *Rex v. Benchers of Lincoln's Inn*, 4 B. & C. 855.

versities, colleges, or schools approved by the Council of Legal Education, all of which are of at least equivalent standing with the matriculation examination of the University of London.

The probationary period of seven years was, as we have seen, reduced to five and then to three years, and all that is left of the college life of the apprentices at law is that the student must "keep terms" during this period.

There are four terms in each year, each lasting about three weeks, known as Hilary, Easter, Trinity and Michaelmas terms, and a student keeps terms by dining three days, if he be a student of certain universities, or six days in any other case, in the hall of his Inn, on each of which occasions he is required to be present at grace before meat and to remain until grace after meat.

It is with this ceremony of "eating dinners" that the call to the Bar is connected in the minds of most of the laity, who do not realize the requirements of examinations, and perhaps, too, in the minds of those from whose memories the anxieties of examination days have faded.

And indeed the vaulted hall with the great open fire, the high table on the dais at which a few benchers are seated, and the long tables of students, who rise at the sound of a gavel to hear a Latin grace, cannot fail to bring to the mind a thought of the high traditions which surround our profession.

The Council of Legal Education appoints a *Committee* of Education, consisting of its own members, with whom may be joined members of the teaching staff, and this committee organizes and superintends a course consisting of lectures and classes which the student once admitted is entitled to attend. A large number of students naturally are at the

same time undergraduates of Oxford or Cambridge and depend on their instruction there to enable them to pass the examinations for the Bar, glad enough of the occasional requirement of eating dinners as an excuse for a trip to London. Thus the traditions of the two universities join with the traditions of the Bar in maintaining a standard of manners as well as one of professional honor.

At any time after his admission the student must pass the examinations known as Part I, covering—

Roman Law, Constitutional Law, Criminal Law and Procedure, and Real Property Law, which latter may be replaced by Roman-Dutch or Mahomedan Law.

Before being admitted to the Bar, but not before he has kept six terms, the student must take the final examination known as Part II, and consisting of papers on Common Law, Equity, Evidence and Civil Procedure, and a general paper, together with viva voce questions.

When he has passed all his examinations and paid all his fees, his name is screened or posted in the hall, the benchers' room and the treasurer's office, not only of the Inn of which he is a student, but of the other Inns. Every name is thus subject to the scrutiny of the benchers of all the Inns, as well as of the other members of the Bar. Finally, presuming that no objection is taken to his application, having taken a further declaration that he has not during the period of his studentship exercised, and will not while a barrister carry on, any of the prohibited occupations before mentioned, and being approved by the benchers of his Inn, the student is called and may at last don his wig and gown as a junior counsel.

Proceedings leading to disbarment are

fortunately rare, and indeed but little spoken of, and enough has been said regarding the manner of becoming admitted to indicate why this is so. The usual practice is not to disbar absolutely, but to suspend for a period, although there is in effect not much difference, as such suspension would be a blow from which no member of the profession could recover.

The procedure at the investigations is familiar to very few, for not only are the facts elicited, but the proceedings regarded as confidential, only the result being communicated to the judges and screened in the Hall and Common Room of each Inn.

It may, however, be said that the consideration and dealing with a complaint are, in the first place, solely competent to the benchers of the respondent's Inn, who may disbench one of their own number or disbar a barrister.

In a Privy Council case⁶ Lord Wyndford remarks: "In England the Courts of Justice are relieved from the unpleasant duty of disbaring advocates in consequence of the power of calling to the Bar and disbaring having been in remote times delegated to the Inns of Court. The power of suspending from practice must we think be incidental to admitting to practice."

At the hearing of the complaint be-

fore the benchers the respondent is present, but cannot conduct his own defense and must be represented by a member of his Inn; it seems, however, that he can call on any member to take up his case. There is an appeal, to the judges as visitors, but it is said that there is no instance of such an appeal in late times; indeed, it is clear that there would be very little likelihood of success. In an appeal heard before the judges in 1846 it was, however, laid down that the benchers, in disbenching one of their own number or in disbaring a barrister, must assign a reason for their action.⁷

We have thus very briefly traced the history of the power of the Inns of Court to say who should or should not be entitled to the privileges which their members alone can exercise.

We have seen that, though supervised by the judges, not indeed as judges, but as visitors, they are independent of any law. We have seen that they are perhaps the most conservative institutions in an ultra conservative country. Fortunately it has always been their aim that the social and intellectual standard required of our profession should never suffer from this conservatism, and we can truly say that they have nourished traditions of honor and effort which cannot fail to inspire.

⁶ Petition from Antigua.

⁷ Appeal of A. Hayword, Esq.

A More Complete Enquiry into the Moral Character of Applicants for Admission to the Bar

By CLARENCE A. LIGHTNER
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(A paper read before the Section on Legal Education of the American Bar Association at Montreal, Canada, September 2, 1913.)

THERE ARE some arguments worthy of consideration in favor of an open Bar, with no restriction except punishment for misrepresentation as to education or qualifications. The medical profession in England flourished with these limitations. One large advantage of this method is that the Bar would, in that case, not be in the position which it now occupies of vouching for the ability and honesty of its members. The public would understand that in choosing counsel they must look out for themselves. The maxim in the law of sales, "caveat emptor," has much to recommend it.

There is a current saying in the one jurisdiction where this system prevails that "any man who has character enough to run a saloon has character enough to be a lawyer, if he can vote," and yet the deliberate opinion of a conservative member of that Bar is as follows:

"I have your letter of June 17th, asking my opinion as to whether the Bar of this state is on a lower plane than the Bar of other jurisdictions in the matter of conscience and intellect, and, if so, whether it is due to the fact that we have no requirements for admission to practice law. In my opinion the Bar of this state ranks as high mentally, morally, and otherwise as that of other states or countries."

While some may think that the opinion is from a prejudiced source, I have no information which leads me to believe that it is incorrect.

However, this is hardly a practical question at the present time, because the tendency, whether desirable or not, is overwhelming in favor of subjecting applicants for admission to the Bar to tests or examinations. The important question for those who are interested in the character of the Bar to determine is whether the standards required and the application thereof to the applicants are accomplishing their purpose.

Now, the only purpose which will justify these examinations is, in the interest of the public, to secure ability and integrity in the Bar.

The qualifications that should be required are, evidently, first, ability and education, i. e., mental qualifications; and, second, character or ethics, i. e., moral qualifications.

During the past twenty years increasing attention has been given to the mental qualifications of applicants for admission to practice, until at the present time (waiving the question of the considerate and reasonable application of the standards set in the several jurisdictions) the requirements are, generally, quite sufficient. If these standards should be raised it is along the lines of general education rather than of technical learning. Any young man of ordinary ability who has received a thorough academic education, and has learned thereby how to use

his mind, will be more creditable as a member of the Bar without any preparation in law than will a young man of insufficient general education, who has spent his time in memorizing law books and judicial decisions. The former will, at least, have intelligence enough to know what he should not do, an advantage frequently found wanting in the latter.

These views may not meet with general approval. Perhaps, fortunately, this is not essential to the matter at hand. Whatever opinion may be entertained upon the question of mental qualifications, the moral equipment of the applicant is of greater importance. Mental attainments are, in large part, of concern only to the individual client. Clients demand in their counsel sufficient learning and skill to produce the desired result; if convenient, within the limits of the law and morals, but, at all events, the desired result.

Moral character, on the other hand, is of more consequence to the Bar and public at large.

If it be conceded that many lawyers delay justice and clog the judicial machinery because of their stupidity and lack of technical education, it must, on the other hand, be admitted that the astuteness of brilliant counsel, devoting their talents to the service of private interests, keeps both courts and legislatures busy in the effort to prevent the miscarriage of justice.

And yet the lawyer's duty to his client now is, and for generations past has been, the obligation upon which the larger emphasis has been placed, even by members of the Bar. Most of the eulogies pronounced upon the Bar as a profession bear upon the lawyer's loyalty to his client. On this theme many touching tributes are found in the speeches of lawyers from all ranks of the profession, in-

cluding members of the Supreme Court. These sentiments are a favorite subject of commencement addresses. The injury resulting therefrom is apparent. The young man about to enter the profession acquires a false perspective of his duty, on the one hand, to his client, and, on the other hand, to the public, including the courts and his associates.

The Bar might well learn in this matter from the medical profession. The fiduciary relation of physician and patient calls for as high a standard of fidelity by the professional man as does that of lawyer and client. The difference between the professions is that faithfulness to this trust is accepted by the medical profession and its members as a matter of course—certainly not as the chief excellence of the profession. Differing from the law, the medical profession claims commendation for itself and its members because of eminent services rendered to the public at large. Individualism characterizes the legal profession, but an esprit de corps which calls for larger views of service is manifest in the medical profession of to-day. It results therefrom, at least in large part, that medicine, with its record of service, is the most popular profession with the general public, while the Bar, living chiefly for itself and its clients, has become the most unpopular. The undue importance given to the lawyer's duty to his client easily leads the young practitioner into unprofessional conduct, and these early lapses from a high ethical standard become, in time, the settled habit of the Bar. Deceit, cunning, and even criminal conduct, when employed in a client's interest, come to be regarded not only as excusable, but even as commendable. The facts disclosed in many of the decisions of our courts justify this statement. Of course the law does not sup-

port these views and the opinions of the courts give no countenance to them.¹

A summary of the lawyer's code of ethics, as expressed by Francis Lieber, cannot be improved upon:

"The advocate does not cease to be a human being with all his ethical and religious obligations, a citizen with all his political obligations to his country and her laws, and a gentleman with all the obligations of honor and civil intercourse. He is no morally privileged person, as no man can be."²

And yet, when analyzed, it is difficult to understand why the lawyer should ask commendation for loyalty to his client. This is an easy virtue. It is merely the following out of a lawyer's own interest, viz., pursuit of his fee and loyalty to the one by whom it is to be paid. Character in a lawyer is shown rather when counsel refuses to advance a client's cause, if it requires a violation of his duty as a citizen or as an officer of the court.

The banking and business worlds have learned that for true success, character counts. Lawyers of intelligence know that this is equally true of the legal profession, and yet, with a sense of helpless indifference, or with no sense at all, they, for the most part, neglect character as an element in legal education, and take no pains to exclude the ethically unfit from admission to the profession.

The evils resulting from admitting a morally unfit applicant are not confined to the case in question. The admission to the Bar of one having a low moral standard tends to lower the character of other practitioners and of the Bar in gen-

eral. Not altogether unlike the "gang" in juvenile experience, the Bar of any community has an ethical standard which fairly represents the average of its members.

The public has lost confidence in lawyers, not for lack of intellectuality, but for absence of character in the profession. The people at large, and not without reason, regard the lawyer of to-day very much as the merchant. Instead of tangible goods which the merchant sells to any purchaser, the lawyer offers for sale or to let his knowledge and ability to any person at a price (and frequently to the highest bidder) regardless of the character of the purchaser, or the purpose to which the goods are to be devoted.

The general public does not know that there are in the profession lawyers whose services cannot be bought at any price for immoral use.

These conditions are most manifest in communities having a large foreign population. This unwholesome opinion of the Bar permeates the foreign element. The profession is regarded by them as a desirable, because lucrative, business for their talented children.

An undue proportion of young men seeking admission to the Bar are of foreign birth or parentage, and they carry into the profession the point of view that they have acquired from their environment. The larger part of them have no character from a professional point of view, except, perhaps, the much-vaunted virtue of fidelity to the client.

These facts cause regret that we cannot have the English training for the Bar. Nothing has been devised as efficient for the cultivation of professional ethics as the historic dinners at the Inns of Court. We have in this country no equivalent for the professional atmos-

¹ See the valuable collection of New York cases in Mr. Boston's paper read before this Section in 1912; Vol. 37, A. B. A. Reports, pp. 761-812; and also the articles by Mr. Julius H. Cohen, published in the American Legal News of November and December, 1912.

² Vol. II, Lieber's Political Ethics, Chap. 13, p. 413.

phere, where the student, while eating and drinking, breathes in the best traditions and sentiments of the profession, and where his character and fitness for the Bar become known, with the lapse of terms and their dinners, to the men whose favorable vote is required before admission to the Bar is attained.

The law schools are doing much towards raising the standards of character among their students, but not all law schools are imbued with a sense of responsibility for more than the intellectual growth of their students. Moreover, this influence does not reach the young men who, because of their early surroundings, are in greatest need of it.

Character is formed by experience; it is developed and strengthened by adversity. Until a young man has come through the temptations to be met in actual practice, he can hardly be said to have a professional character. One can, upon inquiry, learn only of his general reputation as a young man reared in wholesome surroundings, and in whom true character may be expected to develop.

The difficulty of applying a character test to young men who have just finished their studies is well expressed by one who has had experience in the matter as follows:

"The applicants are practically all young men, their moral characters are generally good, they have not developed to the point where members of the Bar would know of the want of moral character."

These remarks do not, however, apply to an inquiry into the moral character of practicing attorneys seeking admission in a foreign jurisdiction.

Perhaps the difficulty in applying a character test is the principal reason why so little attention has, in general, been given to the subject. The possession of

"good moral character" is a prerequisite to admission in most of the states. This expression may mean everything, but in practice it usually means nothing.

From a responsible source in one jurisdiction comes the following comment upon this requirement:

"Regarding results attained in actual practice, everything doubtless would depend upon the individual making the observations. In our state saloonkeepers are required to be persons of good moral character before being licensed to dispense intoxicating liquors, but the writer has never known of any one being denied the privilege of dealing in booze for want of good moral character, nor has he known of any case where the provision requiring good moral character upon the part of an attorney has deterred or prevented any applicant from being admitted by reason of deficiency in this respect, though doubtless it may be conceded that, judged from the standard of the ordinary observer, instances might be found where both saloonkeepers and attorneys fail to measure up to required standard."

While the force of this testimony might be weakened by skillful cross-examination and the credit of the Bar in that community thus strengthened, it is also likely that an equally frank opinion would disclose similar conditions in many of our states.

Designed to secure good moral character, there are at present the following requirements, some one or more of which prevail in the several states, viz.: (1) Formal certificates of character from citizens, attorneys, or judges; (2) recommendation by the local Bar Association; (3) certification of character by the local court of the applicant's residence; (4) public registration of the applicant upon beginning his study of the law; (5) publication of the intended application for admission; (6) an affidavit by the applicant that he has read the Bar's code of ethics; (7) admission upon probation for a year, more or less, applied especially to foreign attorneys; (8) investigation of character by the court of last resort or

by its clerk; and (9) a special character committee.³

Some of these methods are doubtless better than others. The situation in a populous community calls for different treatment than elsewhere. But the best of these methods is no better than the worst, unless the personality doing the work is alive to the importance of his duty. Not only must the inquiry into character be made carefully and with complete fairness, but before substantial improvement in conditions can be expected this work must be continued until the community comes to recognize that admission to the Bar is really limited to those whose character can stand an honest, impartial, but searching scrutiny, and that deficiency in character cannot be supplemented by the favor of any official, including judges.

The need of a more complete inquiry into the moral character of applicants

for admission to the Bar has, during the past ten years, impressed itself upon the Bench and Bar of our larger cities. Conditions had become so bad that for very self-preservation the profession took action. The public is right in charging lack of morals in the legal profession up to the Bar. No other agency can remedy matters. Favorable legislation can accomplish little, except perhaps to furnish to the profession the broom wherewith to clean house. The courts control, absolutely, the matter of admission to the Bar, and the Bar controls the courts, unless the profession in any community has lost caste, even in the opinion of its judges.

New York is a convenient illustration of what a large city has done. At the suggestion of the Bar, the Court of Appeals has given exclusive jurisdiction over admissions to practice to the Appellate Division of the Supreme Court in

³ While it is difficult to classify accurately the law and practice in the several states, the following statement gives a fair outline thereof:

(1) It is usual to demand certificates of good character from some source in addition to other requirements. These formal certificates characterize the following states, viz.: Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Utah, Wisconsin, Wyoming.

Prior to 1913 Michigan would appear in this list. The legislature has enlarged the duties of the State Board of Law Examiners. The board's certificate as to moral qualifications of all applicants to practice in Michigan is now required.

(2) The recommendation of the local Bar Association seems to be a requirement that is found only in Connecticut. The practice in Pennsylvania also is peculiar. Character investigation is made by the local boards (being the former boards of law examiners which do not hold examinations since the creation of the state board) in each judicial district, and the State Board of Law Examiners has no direct responsibility in this matter.

(3) A judicial determination of character by the local court and the certification thereof to the examiners or to the court having

jurisdiction over admissions prevail in Alabama, Georgia, Illinois, Tennessee, Virginia, Kentucky, Texas, and West Virginia.

(4) Requiring that a student of law register with the clerk of the Supreme Court, or similar official, upon beginning his study of the law, prevails in Colorado, Delaware, New Jersey, and Ohio, and also, under the law of 1913, in Michigan.

(5) The publication either in the press, or by posting the notice in the office of the clerk of the Supreme Court, or similar public place, of the fact that the applicant intends to apply for admission in the near future, is required in Colorado, Illinois (this is a special provision in Cook County), Kansas, Maine, Maryland, Massachusetts, New Jersey and Rhode Island.

(6) An affidavit by the applicant that he has read the code of ethics of the State Bar Association and that he will try to conform his conduct thereto characterizes Ohio.

(7) Conditional admission on probation is provided for in Oregon and Washington.

(8) An investigation of character by or under the direction of the Supreme Court is the requirement in Idaho, Montana, New Hampshire, New Mexico, Nevada and Oklahoma.

(9) The special character committee has been developed only in New York.

each department, and has authorized the appointment of a character committee by each of these courts. An applicant for admission to practice in New York must secure not only the certificate of the State Board of Law Examiners, but also the approval of the character committee of his department. It is a sufficient recommendation of this system to find that lawyers of the highest character and reputation have accepted the onerous duties resulting from membership on these committees. There is hope for a profession when its strongest members will respond, at substantial personal sacrifice, to a call for service so disagreeable in every aspect, save only in its importance to the profession.

With but few exceptions, character inquiry before admission to the Bar has been conducted in a most formal, if not perfunctory, manner, save in several of our large cities. The results therefrom are the same, no matter what machinery is employed.

Formal certificates of character, even from judges, are in themselves of no value. Publication of names results in no information of value, unless the Bar and the public come to realize the importance of the proceeding. An affidavit that one has read the Bar's code of ethics is of no service in guaranteeing in the reader sufficient character to insure his applying the code to his own conduct. One without character will approve heartily of the code of ethics as applied to the conduct of others.

Character inquiry in our large cities is so formidable a task that one can only admire the courage and devotion of those who have undertaken it. In other communities the work is comparatively slight, but this is the very reason why it should be undertaken at once. It calls only for the cordial, sympathetic coop-

eration of a limited number of reputable lawyers in each locality to secure results.

Whether this responsibility should be given to an existing agency (such as the board of law examiners) or to a separate committee (as in New York) depends upon local conditions. The important matter is not the machine, but rather the spirit that animates the work. It requires disinterestedness and firmness, a sense of responsibility to the profession whose interests are being safe guarded, but, beyond all, good common sense, and an entire absence of pride of authority. The work must be done with such skill and sympathy as to gain, in the course of years, the cordial approval of the Bar and of the public at large.

If admission to the Bar were a privilege to be bestowed upon a limited number of men especially fitted for the office, the work of the character committee would be comparatively simple, but at the present time the public, notwithstanding judicial opinions to the contrary, regards the profession as a right to which any citizen is entitled, unless it be shown that he is not qualified.

It results therefrom that the exclusion of an applicant for general unfitness, when no specific criminal or immoral act can be proven, brings serious and often intemperate criticism upon the action of the committee, and this public criticism cannot fail to affect, more or less, the good results of the committee's work.*

*The following extract from a letter written by a member of one of the state examining boards clearly explains the difficulties attendant upon this work:

"My view as to the results obtained in actual practice is that these provisions are wholly insufficient. The judge accepts the certificate of any two members of the Bar who are actually practicing and conceives himself to be relieved from further responsibility because of such certificate. Even if some member of the Bar should refuse to sign an applicant's certificate, it is seldom

Perhaps, at this time, it may not be practicable, may not be wise, to refuse admission to an applicant on other grounds than those that would justify his disbarment, if already admitted. Consider, however, what a long step forward even this standard would mark.

Doubtless, after the Bar and the public have come to appreciate the beneficial results of the effective application of this standard, they will approve of the exclusion from practice of applicants on grounds of general lack of character.

The best elements for success in this character inquiry, as applied to applicants for admission to the Bar, are well portrayed in the work of the Grievance Committee of the Bar Association of the City of Boston.

The remarkable success of this work

that he is unable to secure two signatures, and I am satisfied that the result has been that persons who are unfitted in character to be invested with the grave responsibilities of an attorney at law have been frequently admitted to the Bar.

"I confess that I do not see any very practical way of excluding from admission to the Bar persons otherwise qualified, upon the mere general ground of lack of moral character. It occurs to me that some more definite standard would be necessary in order for any particular results to be achieved. It could be provided that no one who had been convicted of certain crimes or misdemeanors should be eligible to admission to the Bar, and that conviction for the same should require their disbarment by the judge of the circuit in which they resided. Such provision might also be profitably extended so as to exclude any person against whom any verdict, decree or judgment had been rendered in a civil transaction which found that he had been guilty of actual fraud, but unless some fixed standard can be devised,

is due to the permanency of the committee, its long-continued consistent work, and the conservative but careful treatment given to each case.

The committee has acquired the approval and cordial support of the courts, which it relieves of some disagreeable duty; of the Bar, whose honest members it protects from injurious public attacks; and of the public, which, with the lapse of years, has come to realize that no community in the country has a Bar with a higher standard of ethics than the City of Boston.

Irrespective of the machinery provided for the work, an inquiry into the moral character of applicants for admission to the Bar made in the same spirit will fully justify itself in any jurisdiction.

the existence of which can be ascertained as a matter of fact, and which shall operate as a fixed rule for exclusion of applicants, I do not believe that any efficient provision will ever be successfully maintained for excluding persons from taking the Bar examinations, and, if intellectually competent, being admitted.

"Even if some tribunal should pass generally upon what is understood to be moral character (meaning thereby general character), should it exclude persons as to whom some definite acts of moral turpitude could not be shown, there would be such complaint raised about favoritism that I do not believe such tribunal would long survive.

"On the whole, the subject is a very difficult one and I confess I do not see clearly a way to handle it efficiently, and I fear that like all other professions we will be compelled to let the black sheep come in and simply trust to the course of events showing who are trustworthy and who are not and let the public condemn the untrustworthy by a want of patronage."

Address of the President of the Association of American Law Schools

By HENRY M. BATES

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(Delivered at the Thirteenth Annual Meeting of the Association of
American Law Schools at Montreal, Canada, September 1, 1913.)

THE ALL-PERVADING ferment of the period in which we live will inevitably affect the tendencies, the spirit, possibly the scope, of legal education. In the apparently unordered and agitated movements of perhaps the most fluid century which civilization has known, it is possible even now to discern the general direction in which irresistible social forces are trending. It requires no demonstration that these great social changes, which as yet we only partially understand, will inevitably produce corresponding changes in our law. Indeed, the process is already well under way. It was no accident, no mere political cunning, that made our law and its administration the central and the dramatic issue of the last presidential campaign. Vast forces, beyond control of individuals or of parties, have made our legal system a problem and forced it upon the attention of the country.

In this state of affairs law teachers of to-day occupy a strategic position, and are fortunate, perhaps beyond any who have preceded them, in the possession of opportunity for conspicuous service in the cause of social justice. Certainly not since the time when Langdell and Ames proved that there is a science of juristic principles, and that law may best be taught, not as dogma nor a trade, but as

a science and a profession, have law teachers occupied a position of equal strategic strength for helping to direct social movements towards a more nearly perfect justice.

The development of the case system of instruction, with the consequences which have flowed from it, has proved to be very much more than a mere change in legal pedagogy, for this scientific study has resulted not only in the accurate and scholarly restatement of much of our law in accordance with true juristic principles, but it has produced a generation of law teachers and thinkers capable of leading the way, in one at least, and I believe in both, of the great changes through which our jurisprudence seems destined to pass in the near future, a change of emphasis from extreme individualism to a broader social policy through which individuals, *all* individuals, may find greater protection as well as greater opportunity, and a reduction of our whole body of law to a real system.

Not even the leaders of that great movement, the conception and early development of which we are all glad to recognize as the contribution of the Harvard Law School, worked in such close contact with epoch-marking changes in social structure as is it possible for the

law teachers of to-day to do. But responsibility and obligation follow opportunity with equal pace, and law schools and law teachers should set themselves zealously and thoughtfully to the accomplishment of the difficult tasks in the improvement of our law which circumstances and conditions seem to call upon them especially to perform. The opportunity and the duty are ours. The Bar, whether because it is the victim of the inadequate legal education of the past, or because it is submerged in the commercialism of the age, or because of its traditional conservatism, or because of all these reasons, does not, with many exceptions, of course, fully appreciate the situation and seems powerless to do much, though the whole country is insisting that much be done to improve law and its administration. Besides the passivity of the Bar, there are many reasons why leadership in legal reforms must be assumed by law teachers and many indications that the public is beginning to look to them for this purpose. The "cult of incompetence" associated with early stages of democracy is giving way to a belief in expertness, in specialization, and in sound thinking. And so even the long-sneered-at scholar and theorizer is coming into his own. The United States has had one President who, though most distinguished for public service, was for many years a successful teacher of law, and the country has applauded the sweet nature with which, leaving his exalted political station, he has returned to law teaching, with serene confidence that he was not thereby affecting the dignity of our highest political office. He has been succeeded by one whose whole active life, until two years before, had been devoted to teaching public law and government. Governors, mayors, and other high officers have re-

cently been recruited from our ranks, but perhaps even more gratifying is the conspicuous fact that heavy drafts have been made upon the ranks of teachers for expert service in public matters of vital importance, such as tariff-making, insurance, and other commercial investigations, and the drafting of legislation. Most welcome and significant, too, has been the growing tendency of state and local bar associations to invite law teachers to address them. The profound impression upon the Bar, and the entire country as well, made by the address of our colleague Pound at the American Bar Association meeting in 1906, would suggest that the program makers of that Association have overlooked golden opportunities since then. It is fortunate that the development of a class of professional law teachers and scholars during the last 30 or 40 years has given to the country, at a time when its political, industrial, and social institutions are in a period of unprecedented flux, a disinterested body of men of scientific legal training, with time and the other opportunities for investigation and mature reflection, free from the distractions, the restrictions, and the mental refractions of active law business, who may take leading parts in the reformation of much of our law, a reformation made inevitable by the changes already alluded to.

Granted that the opportunity to render service in matters of fundamental importance to the state in a critical social period exists, how shall law school men avail themselves of it? How shall they proceed? Obviously an adequate answer to these questions can be given only after an analysis of the principal and persistent causes of dissatisfaction with our system of law and its administration, and a consideration of which of them are of such nature that they may be

removed, and which of these our law schools and law teachers are best qualified to attack. That there is a relation between law schools and the characteristic features of that system of law which obtains in their jurisdictions, so to speak, and that in that relationship the school is by no means exclusively the product or the creation of the "received tradition," but that it powerfully reacts upon the law, is recognized in Maitland's much quoted saying that "law schools make tough law." If law schools may give permanency, or at least persistence, to a legal system, they ought also, in some measure, at least, to be able to give it other qualities, to guide or mould in some degree the life which persists. The toughness, as our friend Pound put it last year, may be made "that of living tissue, not that of dead fiber." May not law schools also have something to say as to the quality of that living tissue? This certainly is a possibility which was overlooked for centuries in the history of education in English law. The severe and rigid training of the Inns of Courts, which dominated legal education until the eighteenth century, was a species of intellectual gymnastics which produced remarkable dialectical skill and tended to a high degree of professional efficiency, but the function which was proposed for it and which it served almost exclusively was preparation for practice at the Bar in precisely that scheme of law which then existed. Anachronistic procedure, "crabbed pedantries," out-worn legal fictions, substantive law which still smacked too much of the first substitutes for private revenge, were received and passed on to succeeding generations, with little or no comment or questioning. The training in the Chambers of practitioners and the work under special pleaders, which succeeded to the educa-

tion of the Inns of Courts, savored even more of mere apprenticeship and its limitations. The establishment of the Vinerian chair at Oxford in 1756 marked the beginning of academic instruction in English common law, but, momentous in consequences as it was destined to be, this foundation, and the brilliant contribution of the first occupant of the chair, were but the seed, which even yet have not come to full fruition, either in England or America, at least so far as actual conditions at the Bar or in existing law are concerned. The reasons for this long delay in liberalizing the education of English lawyers are too well known to the members of this Association to justify recital on this occasion.

As is well known, Blackstone's Commentaries found readier acceptance in unformed America than in England, and their wide reading here, followed by the publication of Kent's great work, made possible in America a study of law in some respects more systematic, less rigidly professional, than was then possible in England with its long-settled scheme of legal study, which resisted change with characteristic British tenacity. Perhaps this gain was more than offset by the low standards and haphazard methods of admission to the Bar in the United States, the unfortunate results of the material necessities of a frontier country, intensified by pseudo-democratic notions, which have survived to this day with characteristic American obstinacy. But that is another story, and a very sad one, in the history of the American Bar.

But despite the learning and the understanding which went into them, Blackstone's and Kent's Commentaries and other scholarly treatises were, for the most part, studied dogmatically. Lawyers boasted of the elasticity of the common law, but they dealt with that

law as if finally it had become stratified in the ultimate, perfect, and immutable system. This was the view impressed upon students in law offices, and the law office was the most traveled route to the Bar until late in the nineteenth century. But even the law schools, during the earlier period, had very much the view point and the instructional method of the law office. Hence generation passed on to generation a body of law which had received very little pruning or conscious alteration at their hands. Changes came, of course, but they came for the most part through the irresistible forces of social life. Not until the development of the so-called case system of instruction, which is at once historical and analytical, was the student given such a view of law, its origin and growth, as would enable him to understand its limitations, its tendencies, and its true functions. Within less than twenty years a prominent legal scholar in a public address upon an occasion of great educational importance said:

"Law is a science. It assumes to direct all social affairs to the co-ordination and control of social phenomena. It proceeds by logical deductions from immutable and fixed principles, and it excludes whatever is speculative, arbitrary, or experimental. It is sufficient for itself, manifestly containing every rule of action which under any possible combination of circumstances it may ever become necessary to formulate or to apply. It contemplates no legal problem as incapable of solution by intellects which are familiar with its principles and schooled in dialectics or whose solution will not be impregnable and unequivocal as are its principles themselves."

It is possible that these words may have been intended, through some sort of rhetorical process, to convey a meaning

consistent with our present view of what law is and does; but their pomposity, their glittering generality, the pseudo-mysticism which lurks about them, produce a jumble of extravagance, which to unrheterical modern ears sounds much like burlesque. They are in strange contrast to Gray's simple but penetrating words:

"In the older days when the rules composing the law were thought of, or at any rate talked about, as deducible with unerring certainty from unquestioned principles, it was customary to speak of jurisprudence as dealing only with rules already established, for those rules were feigned to hold within themselves all possible doctrines of the law; but now that we know more of the mode of the growth of the law, it is not the immutability of legal principles which attracts the mind, it is the prospect of their future development."

These two quotations fairly present the contrast between the aims and the results of the old and the new theories of legal education. But the great majority of the men now upon the Bench or at the Bar were either office-trained or are the graduates of schools which had not accepted the newer methods and ideals. Consequently the more scientific legal education has not yet had time to weave enough of its product into the fabric of our law to achieve its complete victory. Far from it. It has restated much of our law, it has placed many lawyers of "light and leading" in places of leadership, but the older dogmatists, if they are not still holding the fort, are but beating a slow retreat. With so much yet to be accomplished by a scientifically trained Bar, is it premature to now consider whether we may wisely and profitably essay even newer and farther advances, to be accomplished possibly by altera-

tions in, or additions to, our present plans and methods? Is there an even more distant and a desirable goal, to attain which our mode of march and our equipment must be slightly changed?

If the defects in our law are traceable in some measure to a defective and comparatively unthinking scheme of legal education, now that law teachers are, or think they are, alive to their opportunities, and have developed a plan which not only instructs in the law, but of far greater importance produces power in legal thinking and analysis, are they not, under the compulsion of noblesse oblige, to strive by direct means as teachers for such changes as will increase and make more enduring the usefulness of the common law to which they owe allegiance? Or is it the part of wisdom to rely upon this more scientific training indirectly to accomplish its perfect work through the increasingly better educated lawyers who go out from our schools, and through the contributions of legal scholars in their private capacity? That the prime function of all education is to educate, of the law schools to give sound legal instructions, are truisms which I would be the last to gainsay. This is and always must be the principal means by which law schools may contribute to the perpetuation and the amelioration of a legal system. But there may well be some question as to what is the complete potential scope of a sound legal education. It is possible that efficient as is the best of our present law school work, nevertheless slight changes in emphasis here and there, alterations in and additions to our curricula, a spirit, if not less retrospective, at least a little more prophetic, may contribute to the growth of a legal fiber, which, though preserving the strength of toughness, will better adapt itself to, will aid and not hinder or

repress, a constantly advancing civilization. Whether this be true, and, if true, the matters in which, and the methods by which, the American law school may most hopefully tender its aid in removing such evils as our law is justly charged with, these are questions which, as before indicated can be intelligently answered only after some analysis of the real defects in our jurisprudence.

I shall not attempt here an original or complete analysis of the grounds of popular discontent with our legal system. Roscoe Pound has discussed this matter admirably in "The Causes of Dissatisfaction with the Administration of Justice," *Proceedings of American Bar Association* (1906), vol. 29, p. 395, and in an address on the "Organization of Courts," before the Law Association of Philadelphia, January 31, 1913. In a general way it may be said that popular criticism of the administration of justice in this country charges, first, a faulty procedure which causes unnecessary delays, expense and technical error with justice-frustrating results; and, second, a substantive law, erroneously declared to have been created in the interest of classes rather than of society as a whole. These complaints of laymen the legal scholar might analyze more closely and distribute under four heads: First, he freely admits inexcusable defects in procedure. Second, much that appears to be defective procedure he attributes to inadequate, unbusiness-like organization of our courts. Third, the defects in substantive law, which many laymen charge are devised to protect the so-called "interests," the scholar realizes are traceable to the persistence of an individualistic legal philosophy, in an age which, whether for good or for ill, grows increasingly more social, more collective in its work, its thinking, its emotions,

and that these defects in this law, if such they be, are nearly all of them honest, not corrupt. Fourth, lawyers all realize that our law has so increased in mere bulk that it has become unmanageable, if not in some respects unintelligible, and that juristic science can do little more for it, unless and until its mass, which "slowly broadens down from precedent to precedent," may be converted into a genuinely scientific system. Fifth, it must be admitted, as leaders of the Bar freely do admit, that our failure in America to insist upon adequate general education, legal learning, and sound character as necessary qualifications for admission to the Bar, have produced their inevitable consequences, narrowness of vision, professional inefficiency, and neglect of ethical considerations, which, despite a majority of able and upright lawyers, have seriously impaired the usefulness, the influence, and the prestige of the Bar as a whole.

Can the American law school contribute more directly and more effectively than it has in the past to the removal, or at least to the amelioration, of these conditions? Almost certainly it can, and, even though the increment of its service be small, it is worth the effort to achieve. Take, for example, the defects in our procedure. Whether because it has been considered unworthy of serious study, or an art devoid of scientific basis, and therefore to be learned only in the forum, or because it has presented a less inviting field to legal scholars, procedure has received but a small part of the attention which has been bestowed with such inestimable benefits upon substantive law and upon pleading and evidence. This seems strange, in view of the oft-insisted-upon relations between rights and remedies, and the undeniable

influence of procedure upon both. If some of our law schools were to do for procedure what Thayer and Wigmore have done for evidence, can there be any doubt we would soon be closing the gap between England and ourselves in this respect? There are certain general principles upon which procedure rests. These may be ascertained and taught, and their statement and the teaching of them would lead to intelligent reformation. Herein lies one of the chief benefits of a properly conducted practice court, one conducted not for training in forensic speaking, nor for a mere advance rehearsal of trial in court, but as the crowning, vivifying step in a careful study of the basic principles of trial. There can be no question of the eye-opening, stimulating effect when students preparing and trying a case in accordance with the cumbersome, over-technical, archaic practice in Illinois, observe the far easier task of others in the same class who are proceeding according to the simple, direct, speedy, and court controlled practice in Michigan. The practice department, at least in those schools which have national constituencies, affords ample opportunity for the comparative study of procedure; and this study, which need demand but little of the student's time, might easily and should be so directed as to instill in students an intelligent desire and a purpose to work, when admitted to the Bar, for reform and at least something approaching uniformity in procedure throughout the country.

No law school has yet made the most of its opportunities in this respect. But let us hope that beginnings which have been made in some of our schools are stimulating and developing teachers and scholars in procedural law, who will be

able to guide in a scientific reform in that important part of our juristic scheme.

As to improving the organization of our courts, the law schools as such probably cannot have as great influence as in other matters. Law schools may give impetus to such a movement, but the dominating influence must proceed from the Bench and the Bar. Comparative studies in court organization and other contributions by law teachers to the literature of the subject may, however, be of the greatest value. We have already had some instances of good work in this field, which will prove a fruitful one for further study. Moreover, there is a growing feeling among law teachers that at the outset of the course students should be given more systematic instruction in the history, organization, and jurisdiction of courts, and either then, or more properly, perhaps, in the senior year, there might well be given a few lectures setting forth the powerful influence exercised by court organization upon procedure and upon the achievement of justice itself. A graphic comparison, in such a course, between the centrally administered, simple, business-like and efficient reformed judicial system of Great Britain, and the cumbersome, disjointed, uncontrolled systems prevailing in most of our states, would certainly produce a profound impression upon students. We need not go beyond our own borders for helpful models of judiciary organization. The Municipal Court of Chicago, with its responsible, supervisory head, its simple procedure, its branches to serve special needs and localities, its bureau of information, its statistical records, is, and long will be (unless the quality of its judges, and through them its general efficiency, is impaired by the imperfect scheme of

primary elections there prevailing), a shining example of the adaptability, the quick dispatch of business, the efficiency and the general satisfaction-giving results of an organization carefully designed to meet contemporary and not mediæval conditions. If the facts and their consequences ascertained by such comparative studies as I have indicated should be given in some effective way to the students in all our law schools, can there be any doubt that the demand and the movement for better organized court systems would soon receive powerful and well-directed stimulus from the newer generation of lawyers?

In the investigations into the history of law, which it has promoted, in the development of the historical method of study the American law school has done much to give to many lawyers a conception of the basic fact that law has always been a changing thing, and of that other fact, more difficult of a realizing application, that it must continue to change as long as society lives. Thousands of lawyers imbued with these ideas have gone from our schools to the Bar during recent years, but they have become absorbed into the much larger mass of lawyers more dogmatically trained and inclined. In the contact with this larger mass and with the commercialism now so prevalent many of them perhaps have lost their ideas and their ideals of a truly adaptable and serviceable law. At any rate, the dogmatic, the narrowly legalistic view still too strongly prevails, and the dogmatists still maintain their claim of guarding the temple of justice. Their obstinate resistance, their cramping of the streams of justice, are largely responsible for the turbulent and turgid mass of ill-considered, carelessly drafted, inconsistent, and often dangerous legislation, which our courts and society in

general are vainly endeavoring to understand, apply, and assimilate. The gospel of a living, growing, and ever refining law must still be taught, and, if possible, more effectively taught, if the Bar would retain its traditional hold upon legal institutions. Granted that present improved methods of legal instruction have not yet had time to accomplish their complete potential effects, it is still worth while to inquire if we may not increase their effectiveness in teaching a law which shall be supple as well as tough. Whether this be possible for the law school alone, certainly it is a proper function for the University as a whole. (1 Tufts. The University and the Advance of Justice, V Univ. of Chi. Mag. 193.)

To quote a philosopher who has had his attention attracted to juristic problems:

"The task of bringing the new economic and social sciences into legal doctrines is quite as evidently laid in large measure upon the university, which will thus follow in the line of the church, the customs of merchants, and the legislation of the last century, as liberalizing agencies for the common law. And another influence may be expected to flow from university contacts. One source of strain in the accommodation of law to present needs, we are told, is that lawyers on the whole still appear to hold, consciously or subconsciously, that 'principles of law are absolute, eternal, and of universal validity.' Philosophers have frequently held the same thing about morals. But the spirit of a modern university, quick with inquiry, seeking the origins of suns and atoms and organic life, of language, customs, government, morals, and religions—this spirit must prepare the future lawyer and jurist to say with Kohler: 'There is no eternal law. Law must adapt itself to constant-

ly advancing civilization. This civilization it must aid, not hinder or repress.'"

But the efforts of the university to accomplish this task can have little, save indirect, influence. The university even yet reaches too few law students, and the "new economic and social sciences" are not brought into direct relation with legal doctrines. Law is then superimposed upon the college structure, in an educational stratum so segregated and differentiated from what has preceded it in the student's mind as to resist, if not to dissipate, its liberalizing influences. A few universities have endeavored to avoid this result by coalescing and telescoping the so-called liberal with law studies in the combined arts and law courses. But it cannot be said that this plan has met with conspicuous success. In the first place, it affects but a small proportion of even those who go to the Bar through our law schools. Moreover, in the university with which I am most familiar, and I believe the experience elsewhere has not been materially different, the beginning of law studies in the second or third year, and continuing the liberal subjects into the fourth or fifth year, has not produced important liberalizing effects which are apparent; and, on the other hand, it has seemed to impair that efficiency in law work which is and must continue to be a prime desideratum. On paper the plan seems a promising one, though there are two obvious and related objections to it. It brings the student to the study of fundamental divisions of the law with a year or two of less intellectual maturity than does the older plan, and during a period when the side-show activities of college life, by natural associations, seriously impair the earnestness of purpose of the average student at least. Nevertheless, perhaps a longer trial, or the further ap-

plication of the dovetailing of liberal and law studies, may yet prove the value of this plan. While under present conditions it can affect only a small proportion of all law students, those few may be enough to leaven the lump.

A few schools have recently begun the effort to accomplish this same liberalizing effect by the introduction of courses in Jurisprudence, Roman Law, the History and Philosophy of Law for advanced students. The men electing these studies are usually looking forward to teaching careers, and there can be no doubt that they will thus acquire a breadth of view and a more comprehensive grasp, which will inure in turn to the benefit of their students. Any immediate or direct effect upon the Bar is scarcely to be looked for. It has been argued that putting work of this character in a fourth year comes "dangerously near to inverting the pyramid," at least for prospective practitioners. Granted that there is strength in this argument, the well-nigh conclusive answer is that until a student has acquired some mastery of a single system, such as the common law, jurisprudence and legal history are practically meaningless to him.

If the law course could be properly lengthened to four years, the problem might be solved to telescoping these extra legal subjects into the regular law curriculum. And despite the facts that economic and social considerations make it highly desirable that we decrease rather than increase the age at which our students may go to the Bar, yet the growing pressure from the expanding bulk and new extensions of the law will almost surely force the four-year course upon us, if some other solution of the difficulty is not found. It is freely conceded that students who have received sound training in the greater part of the

law may "work up" the remaining part for themselves, but it is submitted that many of them will never do so with distinct success. The students in a number of our leading schools are unable, under present conditions, to cover in three years from 10 to 25 per cent. of the regular, important courses offered in the curricula. This cannot but be in some measure unfortunate. That students are of this opinion has become apparent to us at Michigan in the growing tendency of many of our best men to enroll in our summer sessions, not for the purpose of shortening their period of preparation, but to pursue under instruction subjects which otherwise they could not take in course.

The removal or amelioration of the fourth defect in our jurisprudence, its lack of co-ordination and of system, would go far to solve all of the law school problems which we have been considering. In this matter of fundamental importance, perhaps our schools have been doing all that they can effectively attempt. The brilliant work of Langdell, Cooley, Ames, Williston, and Beale, and others whose names readily occur to us, in restating accurately many branches of the law, and in impressing their views upon thousands of prospective lawyers, has been an indispensable and most productive step in the evolution of an integral system of common law.

The day of *corpus juris* is, I fear, far distant. A great deal more of the kind of work just referred to must be done in other topics of our law; the enlightening work of historical exploration, as outlined or at least suggested by Thayer in his essay on the teaching of English Law, must be more nearly accomplished, before we can safely venture to codify. But perhaps something more toward the realization of that hope may be profitably

undertaken by law schools. Mr. Cook's paper read at our last meeting, the discussion by Messrs. Schofield and Williston, and the paper by Mr. Hohfeld in the June number of the Michigan Law Review touched upon a proposal which may well be a preliminary step in the systematizing of our law. It is to be hoped that we may have further discussion, enlightened by experience, as to the teaching of equity. In the picturesque language of Mr. Kales, has the new cock proved its ability to fight? Other fields of law afford at least equally inviting opportunities for a redistribution of topics. Perhaps this is particularly true of public law. We are now giving courses in constitutional law, the law of public officers, of public corporations, administrative law, taxation, and federal courts with much of unnecessary overlapping and perhaps some gaps. The greater part of the courses in federal courts and taxation could be thrown into constitutional law, and a new course entitled "Public Law" might absorb all of the other topics named. Damages, quasi-contracts, conflict of laws might be distributed into contracts, torts, and other subjects. These suggestions are made rather to raise the question of their advisability than to attempt to answer it now. It is not a clear case. There is some possibility that the process carried out would prove to be not much more than a substitution of horizontal for vertical sectioning. It would be a manifest mistake to abandon settled nomenclature and well understood classification unless clear gains can be made thereby in other respects, and there is at least distinct pedagogical advantage in having descriptive labels for the various topics of the law, provided the description conforms to the fact. The one important question is, is there a possible rearrangement of

the subjects now taught which would tend to produce a more systematic knowledge on the part of students, and indirectly and ultimately an approximation to a genuine system of law? The question cannot be answered empirically.

The development and expression of an integral legal system will require an ability to perform constructive work, which the training of our law schools does little to produce. Our students are taught to analyze and criticize and refine, but they do little in the way of generalization or of synthesis. It is true that critical analysis must precede any sound constructive or reconstructive work with pre-existing materials. The point is that we stop short of the latter steps. Constructive power must be perfected in the work which comes after formal education, but is it not possible that some impetus and some training in such work could be given in the schools? The writing of theses has not been productive of great results and has been abandoned in most of our schools. Perhaps with the adoption of higher educational requirements, and the increasing intellectual maturity of our students, the thesis in a modified form may be reintroduced to advantage. Herein lies another of the benefits of a properly conducted practice court, for the development of the theory of a case, the preparation of briefs and arguments, does require constructive effort. Of course the danger is that the result may be too strongly tinged with advocacy.

The last of the grounds of complaint against the administration of law in this country is the inefficiency of the Bar as a whole. This is due principally to the fact that as compared with legal profession in England, Germany, and France, and with the medical profession in our own country, we have been content in-

deed have insisted upon notoriously low standards for admission to the Bar. The causes of this unfortunate fact are to be found in the conditions under which the profession of law had its early development in this country, and to the survival of certain early prejudices, clustering around the absurd belief that any American, with or without training, can successfully do anything, and that to require adequate education, general and legal, is to close the door of opportunity, and is therefore undemocratic and un-American. The result has been altogether too much incompetence and slovenliness. Against this state of things the American law school has always fought with varying degrees of vigor, courage, and skill. Of late years it has exerted powerful influence in this direction. But on the whole it has been too timid in pressing its views, in insisting on what it knew to be right. This timidity has doubtless been due in part to the consciousness of law teachers that they have not possessed the entire respect of the Bar, a respect it must be admitted which they have not always deserved. In the days when law teaching was mainly a by-product of practitioners, and when the law school was a refuge for lawyers who could not win success in practice, or for retired judges and attorneys who desired to spend their declining years and waning powers in a respectable and dignified retreat, there was really no great reason why the Bar should give much heed to the opinions of such teachers. But with the rise of a class of professional law instructors, devoting their time and energy to the work of legal scholarship, the condition has rapidly changed. The demonstrated efficiency of the graduates of our better schools, and the scholarly and very practical contributions of law teachers, have achieved their natural conquest,

many evidences of which were referred to earlier in this paper. The time for more assertiveness has come. The Bar is in need of all the help it can get, and it is my experience that with entire friendliness it is looking to the law schools for leadership along the lines which we have been traversing to-night.

That the teaching, practice, and administration of law are not matters of common right, but privileges existing only for the benefit of the state, and therefore to be granted only upon such conditions and subject to such supervision as the state may impose, are self-evident propositions, which, nevertheless, are too often ignored in practice. I believe it to be the duty of law school men, even in the face of misconstruction of our motives by interested or prejudiced persons, courageously to maintain these propositions, and in bar associations, state legislatures, and elsewhere to work for their actual acceptance in all schemes for admission to the Bar. Law schools, it seems to me, and especially state law schools, perhaps, have duties beyond the pursuit of scholarship and the teaching of students who seek their instruction. They should seek to exercise a direct influence upon legislation, rules, and conditions relating to admission to the Bar. They should by appropriate means oppose the acceptance or retention of standards lower than the highest which may be practicable in our several states, considering all of the conditions obtaining. This certainly means for the majority, if not for all, of our states, the exclusion from accepted methods of preparation for the Bar mere office study or work in correspondence schools or others run primarily for revenue and at the expense of sound training. It is idle to say that this would exclude from the Bar worthy men. Even if this assertion were true,

the fact that the practice of law is a quasi-public function, which must be regulated in the interest of the state, is conclusive. Where necessary the desire of the individual must yield to the welfare of society. But I deny the premise. In these days of public schools, colleges, and law schools numerous dotted over the length and breadth of the land, no man capable of achieving distinct success and usefulness at the Bar need go without a reasonably good general and legal training. Moreover, the claim that there is need of an inferior grade of lawyers, trained by cheaper and ineffective methods, for rural or unimportant out business is equally fallacious. There is no need of poor lawyers anywhere. The market is glutted.

I am aware that these suggestions contain no new philosophy of law, no proposals of radical innovation in legal education. They urge but a careful scrutiny of our existing methods with a view to

possible improvements, a change of emphasis here and there, and the exercise of a more aggressive and extensive influence by law schools and law teachers in legislation, particularly in efforts to codify, to systematize, or make uniform our law, and in relation to standards for admission to the Bar. But only by such step-by-step processes, by changes based upon experience, study and analysis, do most institutions endure, prosper, and with increasing effectiveness serve their proper functions. And certainly this must be particularly true of any establishment which would serve the English common law. By such means revolution is not accomplished, but rather the less wasteful, the more enduring, processes of evolution. If the prospectus of law school men lacks dramatic thrills, there is in it, however, the greater satisfaction which comes from facing a task which is long and difficult and of vital importance to society.

The Teaching of Practice and Procedure in Law Schools

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CRITICISM of the law, the courts, and the legal profession is one of the popular customs of the day. So constantly and so insistently are we told of the shortcomings of the Bench and Bar that it is hard to hold one's footing against the sweep of the current. One might well suppose from all the clamor

that the ancient respectability of the law had suddenly been discovered to be a monstrous pretense, a fraud on the innocence and trustfulness of the people, a cloak for injustice and a mask for oppression.

But the whole phenomenon is simply an instance of the overemphasis which

always characterizes the human attitude. And this is not to be deprecated, for only in that way can social inertia be overcome and the impulse toward reform be given the necessary momentum.

Progress is an alternating, not a continuous, movement. In all phases of life a period of hopeful activity is normally succeeded by a period of critical retrospect. We push ahead with our work and our plans until something goes wrong, and then we stop, try to diagnose the trouble, revise our program in the light of our experience, and go on again along new lines. This ebb and flow of thought and action is characteristic of life. Hegel, the greatest philosopher of modern times, found in it a basis for a theory of metaphysics in which he exhibited the world as a systematic self-development through the agency of this inherent tendency to intermittent movement due to the experimental nature of all rational progress. Such a philosophy is full of the sparkle of optimism, for it turns our mistakes into indispensable stepping stones to better things.

We are now in the midst of a critical stage in this process of social self-development. Things have not turned out as well as we anticipated, and we have stopped to analyze the situation and propose remedies. Disappointment and discontent are widespread and the spirit of unrest pervades everything. Nothing has entirely escaped.

It would be strange indeed if the law, which touches society so closely, were not included in the dragnet indictment which public opinion has found against modern social institutions. But the gist of the charge has been the administration of the law, not the law itself. With popular legislative assemblies constantly employed in enacting statutes with the sole apparent purpose of pleasing every pass-

ing whim of the people, there could hardly be any plausible excuse for the complaint that the lawmaking power is not responsive to popular wishes. The people seem to have just the laws and all the laws they want. Statutes appear quite fully abreast of current ideas.

But it is different with legal administration. Here the people act through a highly trained but conservative profession, the members of which are not directly responsible to the electorate. The legislature may formulate the standards for admission to the Bar, but the Bar fixes its own standards of professional conduct. Discretion necessarily plays so large a part in judicial administration, and personal capacity and skill are such determining factors in the complex problems of professional work of all kinds, that the legislature can do scarcely more than prescribe formal rules for the guidance of litigation. It can do little to control the manner of their use. But while the profession feels its independence, cherishes its ideals, honors its traditions, and pursues its way in comparative freedom from the fussy regulation of the legislature, it is subject to a power far more potent. The inexorable laws of supply and demand, of competition and the survival of the fittest, guide the destiny of the lawyer as well as the wage-earner or the business man. These are laws of nature which nothing can withstand.

Lawyers are quasi-public servants. They are licensed and employed to accomplish certain purposes. They exist for the benefit of the public. Those who offer what the public will not have must change their ways or go unemployed. The public has become convinced that there is gross inefficiency in the administration of the law. It has weighed current procedure in the balance and found it wanting. There is too much delay, ex-

pense, and uncertainty about it. It does not produce results commensurate with the effort employed.

Many causes contribute to this. One is that there is too little regard paid to the finer ethical standards in the employment of the processes of the law. Technical rules are capable of a beneficent and a malignant use. The lawyer is much less likely to forget his duty to his client than to the court and the public. In the stress and strain of litigation he is too ready to resort to technicalities for the purpose of confusing the evidence, diverting the issues, and laying a foundation for a vexatious appeal, when success upon the merits seems out of reach. It is the "nuisance value" of the rules of procedure which then appeals to him, and it is their "nuisance value" that has discouraged and disgusted the public. No legislation can reach this problem. It is essentially ethical, and the solution lies with the Bench and Bar.

But concurrent with this perverted view of the function of procedure is an apparently inconsistent condition, namely, widespread lack of precision and effectiveness in the use of procedure. We lose our respect for what we habitually misuse. Its logic is lost in the maze of its petty rules; its true purpose is forgotten in the stress of the case in hand.

But procedure, when rightly considered, is the very life of the law. It is that which renders litigation possible. Procedure is merely the means of co-ordinating effort, of harmonizing differences, of offering every one equality of opportunity in offense and defense before the law. Without it there would be confusion, favoritism, and injustice. If the subject were viewed in this fundamental way, and were studied conscientiously as an incident and aid to the development and determination of the merits of con-

troversies, the criticisms now so fiercely directed against it would largely disappear. In its use it is indispensable, in its abuse only does it cause trouble. A professional conscience to curb that abuse, and professional learning and skill to direct its proper use, are the two needs of the time.

Perhaps the law schools have a part to play in the attainment of both these ends. For law and ethics are twin sisters. But the primary problem of the schools is to develop true and comprehensive intellectual conceptions. So far as procedure is concerned, it seems clear that they have failed to appreciate the magnitude of the task and have done little to correct the deficiencies which the public is so insistently pointing out.

Procedure has always been a difficult and technical part of the law. In its primitive condition, law was not much more than a system of procedural forms. Gradually the law of rights obtained the ascendancy over the law of remedies, and procedure lost its claim to an independent valuation and became a means to the investigation and determination of litigated controversies.

Viewing procedure in this modern way, two aspects at once present themselves for consideration. It may be looked at as both a mechanism and a mode of operation. And this distinction is important. Let there be devised ever so good a system, yet its value may be destroyed by clumsy methods of use. On the other hand, with a crude and cumbersome system excellent results may be reached by operative skill. The system itself is a matter over which the legislature has assumed direct jurisdiction, while the mode and manner of its application has necessarily been left largely to the Bench and Bar.

Such a division of responsibility is un-

fortunate, for there is so close an interrelation between the machinery and its operation that a constant and free co-adjustment should be at all times possible. The excellence of a procedural system is to be tested by the ease with which it lends itself to practical use. As practice discloses weaknesses in its fabric, the practitioners themselves should be free to devise amendments and changes calculated to remedy such defects. The users should be also the designers and adjusters. Such is the case in England, where the judges enact and amend the rules which they themselves administer.

But the legal profession in the United States, though it may not have direct authority and control over the rules of procedure, is nevertheless charged with the duty of doing the best it can with the means at its command. If those means are thought to be not of the best, so much the more skill is called for on the part of the profession. Lawyers may not be immediately responsible for fancied imperfections in the system, but they are certainly chargeable with inefficiency in the use of it.

It must also be remembered that procedure is the one branch over which the legal profession is vested with a peculiar and exclusive jurisdiction. While the trained lawyer must understand legal relations in all their phases if he is to be a proper adviser for his clients, his professional characteristic is his authority, and presumably his ability, to use the procedural machinery of the law. Many lawyers never go into court, and confine themselves to a consultation practice. But their advice is predicated upon an understanding of what they might be permitted or required to do if they were to resort to the courts, and, though they do not themselves employ procedural

processes, the value of their suggestions depends upon the accuracy with which they gauge the procedural possibilities in the case before them.

The legal profession in the United States has never taken procedure as seriously as has the profession in England, and it would hardly be amiss to ascribe our much-criticised inefficiency quite largely to this cause. The English professional system, with its division of functions between barristers and solicitors, is based upon the broad doctrine that procedure is of first importance. The barrister is the trial lawyer. He is also a consultation lawyer. A consultation practice is thus combined with the most technically exacting work of trial practice. Instead of freedom from court work being conducive to the development of ability as a giver of legal advice, just the reverse seems to be true. The barristers as a class are a most learned body of lawyers. From their ranks the English judges are drawn. To them is due the credit for English legal efficiency, because they are experts in procedure. Trials conducted by such men, gifted by native ability and rich in a long and varied experience in the conduct of litigation, could not fail to be models of rapid and accurate work. To them the court room is the shrine of the law. Instead of belittling procedure they exalt it as the method by which alone rights can be safely, quickly, and accurately determined.

I take it to be clear, therefore, that the professional equipment of the lawyer ought to include a reasonable familiarity with the fundamental rules under which remedies are obtained in the courts. And it follows that the law schools, which are established to prepare lawyers for professional work, ought to do what is rea-

sonably possible to give them the necessary training in the principles of procedure.

There is, as I look at it, a striking and far-reaching difference in the functions of the colleges of liberal arts and the professional schools. Both are established in the public interest. But while the aim of the former is to develop individual character and mental strength, the latter are expected to produce efficient practitioners. It is of little concern to the college educator whether his students study mathematics, or Greek, or history, for he knows that all roads lead to Rome. He wants to develop the mental powers of his students and to bring them into contact with the best thought of the world's great minds. If he does this he does his duty, for he turns out men with the furnishings and training requisite to broad citizenship. Not so with the professional school. Its task is to train men to do well the technical work expected from their profession. It looks to skillful performance in certain lines of activity. The test of its success is the efficiency of its output. The gradually increasing entrance requirements among the better professional schools mean nothing else than a recognition of the truth that such schools are not a part of the general educational system, but are institutions into which the already educated man comes for special training to fit him for a special service. The law school does not justify its existence by contending that a legally trained mind makes a good citizen, though that may be entirely true. It justifies itself by asserting that the country needs well-trained lawyers and by showing that it can produce them. Accordingly, the law schools, in order to fully fill the place for which they have been created and maintained, should give their students a complete preparation for

all that the practice of the profession will afterwards demand of them.

But the truth is that the schools have never taken hold of procedure in a thoroughgoing and comprehensive way. They have followed the beaten path and nothing more. The great foundation subjects of contracts, torts, and property have been developed with consummate skill, and are presented in the better schools with a breadth of philosophical insight which leaves little to be desired. Instead of being taught in isolated, fragmentary bits, the whole subject in its logical completeness is unfolded before the student, so that he feels and understands its principles, its boundaries, its purposes, and its relations. Such a method of study develops a feeling or attitude toward a subject which becomes a sort of intuitive guide in the solution of its problems. Such a method produces results which time cannot destroy, and the student's knowledge does not melt away with the first lapse of memory.

Why is not procedure taken up in the same far-sighted way? It is not because of any want of importance, as has already been shown. Apparently the schools have not progressed far enough yet.

No school teaches procedure under that name. Few teach it at all. Most schools teach pleading and evidence, with a course on equity practice and another on criminal procedure. Such a division of subjects is like separate courses on consideration and promises instead of a course on contracts, in which the main thing would be left out, namely, the correlation of the parts, which is the real significance of each. But the case of procedure is worse. For if all the parts of a subject are taught even in fragments, there is at least no positive gap left unfilled. But the procedure subjects

taught in most law schools do not cover procedure. Not only is the coördination of parts missing, but one of the chief parts is itself a fugitive and an outcast.

If procedure is looked at in a broad way, it is a single subject. Its aim, as already pointed out, is to supply a mechanism for litigation. One purpose runs through it all, and all its parts fit together like cogs in a gear. Pleadings are drawn to present issues for trial; trials are had to determine issues raised by the pleadings. Rules of evidence determine admissibility, but the foundation of the proof is the pleadings. The jury must base its verdict and the court its decision upon what the pleadings allege and the evidence tends to prove, and instructions are to be drawn within the scope of both. The same principles which limit evidence place restrictions upon the conduct and argument of counsel. Upon the relation between the pleadings and the evidence depends the right to take the case from the jury. Appeals and writs of error call in question principles of pleading, of evidence, and of trial practice. In truth, the writ, the pleadings, the trial, the verdict, the judgment, and the appeal are a connected series of elements each one depending upon the others, each comprehensible only through the others, each supplementary to the rest. To isolate pleading and evidence, take them out of their setting, treat them as absolute instead of relative, and ignore the rest of the subject, is misleading. Only when one understands the problems, the purpose, and the logic of procedure as a whole can he understand the real significance of the rules relating to its separate branches.

The truth probably is that the most important as well as the most illuminating portion of procedure is trial practice, which the law schools largely ignore.

The trial is the end and essence of procedure. It is the center about which all other procedure subjects revolve. To really understand the trial is to understand procedure. The pleadings lead up to it, the evidence is part and parcel of it, the appeal grows out of it. The trial is the heart of procedure.

A glance at the function of the jury in the modern trial at law will make the point clear. It is the jury which is the characteristic feature of the trial, coloring all its phases and determining most of its rules. This is the institution which has made common-law procedure what it is. There is scarcely anything about the trial, from the pleadings to the writ of error, which does not reflect the influence of this unique feature of English and American legal development. The pleadings are drawn to produce issues triable to a jury; the trial opens with the selection of the jury; the conduct of counsel, from opening statement to final argument, is hedged about with restrictions due to the presence of the jury; the rules of evidence are all devised to meet the peculiar requirements of the jury; the whole theory of nonsuits and directed verdicts arises out of the division of functions between court and jury; the difficult and important subject of instructions to the jury obviously rests upon the same conception; special interrogatories and special verdicts are merely devices for penetrating into the conscience of the jury; new trials, with their vastly complicated rules, were devised and are granted as a safeguard against perverse verdicts of juries; the verdict is the final decision of the jury and it fixes the character of the judgment; and the writ of error is sued out or the appeal is taken in most cases because the appellant believes he can convince the court that some error was com-

mitted in the presence of the jury which prejudicially influenced its verdict, and he prays for a reversal and another trial before another jury.

Equity procedure is much simpler. But with it I am not now concerned. It is usually taught in connection with equity pleading and gives little trouble.

Now, if the whole doctrine of civil procedure at law has been developed and is administered with a view to preserving the division of functions between the court and jury, segregating issues and questions of fact from issues and questions of law, that conception would appear to offer a logical center about which to group the various special subjects embraced within the general field. And that means that Trial Practice, which concerns itself with the rules relating to the conduct of the trial itself, is the essential and significant title in procedure.

A well-balanced system of instruction in procedure ought therefore to group all procedure branches about the trial as the procedural center. They should be coördinated with a view to their purpose as ancillary and incidental to the trial, for their meaning, scope, and importance are strictly dependent thereon.

The teaching of trial practice has scarcely been attempted in most of the law schools of this country. And the reason probably lies in the failure to clearly distinguish between trial practice as a body of well-defined and accurately developed principles of procedure and trial practice as a vague and shadowy discourse on success in advocacy. The law schools cannot undertake to teach men how to read character; how to cultivate an impressive manner; how to skillfully interrogate a witness; how and when to appeal to the emotions of the jury; how to delicately flatter or severely arraign. They cannot teach resource-

fulness and tact. The art of expression and the skill of strategy are outside the proper scope of the schools of law. All of these things are as necessary in selling goods or teaching school as in practicing law. The art of advocacy is the art of life, and only life can teach what life is.

But if trial practice is viewed as the keystone of a systematic scheme of procedure, concerning itself with the principles by which the problems pertaining to the conduct of the trial are analyzed and solved, it becomes a very different thing. Such a subject is accurate, logical, and professionally technical. It concerns the very essence of procedure, and it is as solidly intellectual as any other branch of the law.

A glance at the subject-matter embraced by the notion of the trial will at once disclose its adaptability to law school instruction. It includes the scope, plan, and purpose of the statutory systems for obtaining venires, and the theory of their interpretation; the doctrines relative to the examination of jurors on their voir dire, and bias and challenges; the functions of the opening statement and the right to open and close; the principles underlying the different methods of withdrawing the case from the jury, such as nonsuit, directed verdict, and demurrer to the evidence; the theory and practice of preparing instructions for the jury; the purpose and propriety of special interrogatories and special verdicts; the doctrine of new trials and the conditions and limitations under which they may be granted; the rules regulating the conduct of counsel while in the presence of the jury.

All these subjects, with perhaps two or three others, are of primary importance to the lawyer who appears in court. They have been worked out accurately

and comprehensively by the courts in a vast array of decisions. They are based on the closest logic and the broadest policy. They have called forth the best thought of able judges. They lie at the very heart of our judicial system, for of what value are rights if remedies fail.

The trial serves a single and perfectly definite purpose. Trial practice, which concerns its conduct, is not a mere collection of unrelated rules, but a closely articulated subject, in which every part bears a demonstrable relation to every other and to the whole. A study of it gives unity to procedure, and puts vitality into many a dry rule. Pleading and evidence can never stand forth in their true significance until they have been given their proper place as incidents of the trial.

Now, so far as concerns the question, how to teach practice, it is quite obvious that the principles of the subject can be taught in exactly the same way as any other branch of the law, except that I believe the case system is more imperatively necessary than elsewhere. In all procedure subjects the principles depend so intimately on the facts of the cases in hand that they mean little when divorced from the facts. And this is especially true of trial practice.

One common fallacy has perhaps done much to deter the schools from seriously taking up the subject, and that is the prevalent idea that trial practice is essentially local in its close dependence on statutes and court rules. But the reverse is more nearly the truth. The basic principles underlying the subject are absolutely general in their scope and application. Variations occur in minor points, but I believe there is no subject of the law, either in procedure or the substantive branches, where there is less diversity in fundamentals and in the princi-

ples of interpretation than in trial practice.

If it be conceded that trial practice should be taught, another step logically suggests itself. The student of chemistry is taught the principles of qualitative analysis, but he is also taught how to put those principles to use in analyzing unknown combinations of chemical substances. The engineering student is taught in shop courses how to apply the principles learned in the books. Medical and dental students have clinical cases to work upon. Why should not the law student have cases in procedure? The practice court constitutes the affirmative answer of many law schools to this question. But I am inclined to think that the development of practice courts has been hampered by an incorrect conception of their true function.

A practice court is certainly not a mere imitation of a real court. It cannot survive amid the press of work in the brief period allowed for modern legal education unless it does something more than allow men to play they are lawyers. Going through the motions of a trial, even under the supervision and criticism of a competent teacher, is in itself a comparatively unproductive process.

On the contrary, the practice court should be a means and method for actually coördinating the various branches of procedure. It should furnish an opportunity for the students to marshal the principles of procedure as studied theoretically, and employ them in analyzing and solving specific problems of litigation. It should teach a method of attack. To do this it must provide much more than a court room, a judge, and a jury.

To produce a law school trial which shall serve a useful educational purpose, there must be two things: First, a set of facts must be developed analogous to the

facts in a litigated controversy; and, second, there must be a thorough and technical preparation of those facts in all their legal possibilities, by students representing both sides of the controversy.

The first may be done by arranging actual transactions among students selected from the school, and carrying them out in such a way that issues of fact respecting them shall develop. Suppose a dozen men are called upon to serve as actors and witnesses in a case. The character under which each appears, such as that of a contractor or a bank cashier, is assumed. In that capacity each proceeds to take the part assigned, carrying on conversations, executing papers, writing letters, telephoning, or doing whatever is requisite to fill out the schedule of events which the instructor has devised to raise suitable issues of fact. It is easy for the actors to be coached as to what to do and say. After the words are spoken or the acts are performed, they become as properly the subject of future investigation as do any of those events which form the basis of actual lawsuits. The actors can truthfully testify as to what they did; the witnesses may relate what they saw and heard. The case exists only in the doings of those actors, and students assigned to the case as attorneys have access to the same sort of evidence that the practicing lawyer deals with. The case is in every sense an actual case, though artificially produced. It is not assumed. Practically everything that will be shown in evidence will have actually happened.

Having created this foundation for the action, the preparation of the case proceeds along strictly professional lines. And it is here that the chief educational value of the work appears. The theory of the prosecution and defense must be worked out, the pleadings must be

drawn, the evidence must be arranged in proper form for orderly and logical presentation in court, the rules respecting proof must be carefully gone over to insure against exclusion at the trial, the probabilities of objections being raised at the trial must be estimated and contingencies prepared for, instructions properly covering the law of the case must be drawn, the feasibility of employing special interrogatories must be determined, the qualifications of the jurors must be investigated and grounds for challenge fixed upon. In doing all these things the student is really employing the principles of procedure. He is given a case at large. The entire responsibility for it rests upon him. He must work it out from beginning to end, and his work is essentially a lawyer's work. It calls in question all the knowledge of the principles of procedure which he has obtained in the course of his previous study. He draws his pleadings with a view to his evidence; he prepares his evidence in the light of his pleadings.

His case is no moot question of abstract right, but a living issue to be tried and tested in the delicate balances of the court room. Before him stretches the long road which leads to the jury's verdict, with its dangers and pitfalls, its sharp declivities, its sudden turns. To travel it successfully calls for all his knowledge and skill, all his foresight, alertness, and sound judgment. He must weigh the possibilities involved in this choice or that, the advantages of success, the consequences of failure. And in every problem which throws its shadow across his path is involved a co-ordination of the rules of law and the rules of procedure—of the substance and method. Such a discipline is typical of the lawyer's tasks. To meet it success-

fully is the test of professional preparation.

This preparation may be easily supervised and criticized. A trial brief may be required, which shall contain the results of all the work done preliminary to the trial. Such a brief should contain a clear statement of the theory of the cause of action or defense relied upon, fortified by ample authorities, together with a close analysis of the pleadings filed, to demonstrate both the formal and substantial sufficiency of the pleadings under the theory adopted. It should contain a statement of the possible positions open to the other side, and an analysis of the adversary's pleadings to show their sufficiency or insufficiency, and a specification of the available methods for raising any objections which this analysis may disclose. It should contain a full outline of the evidence available in support of all the issues made in the pleadings, and the witnesses should be listed, each name to be followed with a schedule of the facts to be proved by him. There should be specific references to all doubtful points connected with the admissibility of evidence, and methods of proof, with authorities in support of the positions taken by counsel. There should be a full set of instructions to the jury, each followed by authorities and reasons in support of its form and substance.

Such a trial brief is just what every lawyer should have before him in every case which he tries. To prepare it requires a close and intelligent study of every phase of the case, and represents legal effort highly beneficial to the student and strictly professional in its scope. No student will ordinarily fail to understand his case in all its phases after working out a satisfactory trial brief along these lines.

The trial itself, when it finally takes

place, is merely the realization and execution of the plans prepared and exhibited in the trial brief. A jury of students can easily be had who will themselves derive a large benefit from their critical observation of the performances of their classmates. The case will proceed before the jury like an ordinary law case.

But the trial itself should not be looked upon as a mere imitation of an actual lawsuit. As an imitation it amounts to nothing. What the students need is an opportunity to put their knowledge of law and procedure to actual use, and to avail themselves beneficially of those principles about which they obtained a theoretical understanding in their classroom courses. To that end the instructor who presides in the court should not forget that he is instructing students, not impersonating a judge. He should keep the case moving along proper lines. He should criticize and correct freely. If mistakes occur and are not noticed by the men trying the case, they should be promptly suggested by the judge, and the point involved may be thus brought home very forcibly to the student, with all the flavor of a concrete setting. Frequent questions on the part of the judge as to principles involved in the various steps taken during the course of the trial will emphasize and direct sharp attention to the logical groundwork of the procedural development exemplified in the case. A general criticism of salient features of the trial may well follow the rendition of the verdict.

A practice court conducted along these lines is not an appeal to the spectacular, but a serious educational institution. It is pedagogically sound. It is entirely practicable under the conditions prevalent in modern law schools. It stirs the students to their best efforts, and gives them correct ideas about procedure. It

is the only method so far devised for teaching the technique of the profession in a concrete way. It is to the law school what the clinic is to the medical school or the shop to the school of engineering. In short, it presents a synthetic grouping of legal ideas about the trial as the logical center of legal activity.

The law schools have been too unsystematic with their whole procedural program. They have considered procedure courses as an unscholarly necessity—a form of surrender to popular demands. In common-law pleading, which is everywhere taught, the emphasis has been too much laid on the forms of action and the historical aspects of the subject, thus making it a sort of dumping ground for the history of the common law, instead of viewing it as a highly articulated and

logical process for developing a foundation for the trial of issues. A broad curriculum would include pleading, both civil and criminal, evidence, trial practice, and appellate procedure, followed by practice court work as a summation or integration of the other branches. Careful instruction along these lines ought to accomplish substantial results in preparing students to do the thing for which the bar primarily exists, namely to practice law. The law schools have an opportunity to do a great work in raising the standards of practice which all admit are so low in the United States, and in doing something to compensate the American bar for the want of that procedural specializing which makes English legal administration the envy of the world.

Annual Address of the Chairman of the Section on Legal Education of the American Bar Association

By **WALTER GEORGE SMITH**
Of the Bar of Philadelphia, Pa.

(Delivered at the meeting of the Section on Legal Education of the American Bar Association, September 2, 1913.)

SINCE the formation of this Section in 1893, year after year papers have been read by teachers and practitioners of the law that have cast searching light upon the subject of legal education in all its branches. I cannot hope to add anything to the wealth of information, based upon years of study and experience, that has been contributed by distinguished jurists during all this time.

The most superficial examination of the work of the Section and of the Association of American Law Schools and of the Committee on Legal Education of the American Bar Association will show that it has been powerfully effective in crystallizing the sentiment of the profession in favor of the highest practicable standards both for preliminary and strictly professional education.

In its report last year the Committee on Legal Education summarized the advances in legal education as being:

"(1) The recognition of the superiority of the law school over the office preparation for the Bar.

"(2) The recognition of a definite period of legal study upon the completion of which, and not before, the applicant can apply for admission to the Bar.

"(3) The lengthening of the law school course of study to three years.

"(4) The changed method of law instruction, which has substituted in so many of the law schools of the country the study of law through cases, either as an exclusive system, or in combination with use of text-books, in lieu of the old system of lectures and text-books.

"(5) The development of a class of law teachers who are withdrawn from law practice, and whose vocation it is to teach law."

In the lifetime of men, who are still in full vigor and of ripe professional experience, there has been a revolution of sentiment in regard to the proper preparation for admission to the bar. The old and in its day effective system of office education has given place, not alone in large centers of population, but to no small extent throughout the country, to that of law schools. The courses in these prosperous schools have been made thorough, and are the constant subject of improvement as experience shows their defects. The theory of their teaching is to train the student in the fundamental principles of the law as it obtains in all of the states, leaving to his individual industry the task of familiarizing himself with the local law peculiar to the jurisdiction in which he intends to practice. Thus "the law schools of the country are national and not local."¹ They draw their students from all parts of the country, and one of the not least valuable fruits of their work is the spread of a common professional feeling and attitude of mind towards the civilization that

has been the outgrowth of the ideals upon which justice under the law is or should be administered.

The growth and development of law schools since the humble beginning of Judge Reeve at Litchfield, Conn., to the present day has been traced by other hands. As compared with the rapid growth of other educational institutions, it may seem to have been slow, but since 1877, when the course at Harvard was made to cover two years and preliminary examinations became requisite, the advance in standards has been as rapid as conditions would bear. As was said by an eminent teacher and is the common experience of all who have given the subject of legal education any consideration:

"The first among obstacles which have retarded development of law schools is the strange notion of an inherent, natural right of the citizen to practice law, dominant in the public mind and widespread in the profession."²

While sentiment is changing, as is well shown by the interesting comments from all parts of the United States on the proposed "standard rules for admission to the bar," which will come before you for further consideration at this session, there is still a strong feeling that the door of opportunity will be unfairly closed against deserving and ambitious young men if a longer time and more stringent examinations are made imperative.

It is not difficult to account for this feeling of indifference or hostility to the efforts that are being made to elevate the standards for admission. The youthful imagination of the candidate himself has been made to glow, and his spirit of emulation has been roused, by the recital of the careers of eminent lawyers and statesmen whose principal school has

¹Rep. Com. Leg. Ed., 37 A. B. A. 605.

² Roscoe Pound.

been that of experience. When he reads of the poor youth who had acquired the rudimentary elements of a general education at the cross-roads school, and afterwards, when he had been elevated to the dignity of a country schoolmaster himself, in the intervals of leisure during the winter months or in the summer vacation got such knowledge of the theory of the common law as the admirable commentaries of Blackstone could give him, becoming through various vicissitudes a leader of the bar or a venerated Justice of the Supreme Court, the average youth feels that after all the prizes of a lawyer's life are not so far beyond his grasp. He forgets, or rather has never been taught, that the indomitable will of the great man has risen superior to obstacles that would have crushed the mediocre, and, while his habits of industry and application have of course been strengthened by poverty, his eminence, where it has been attained in the law, has been the result of hard, constant, and patient study, kept up during his entire active career.

The popular impression that any one can be a lawyer has been based to a great degree upon a confusion of thought as to what constitutes a lawyer. During the earlier years of the Republic, and still to a great degree, public officials have been drawn largely from the legal profession. The brilliant success of many of them in politics has been attributed to them as lawyers, and the facility with which they have risen to commanding power has led to the belief that through the portals of the court room the way lies to political eminence. This is still largely the case, and will be so long as democratic institutions prevail; but, obviously, the curriculum of the law student is not laid down directly for his

guidance as a successful politician, but that he may become so familiar with general principles upon which the common law is founded that he may be a safe adviser to his clients and a competent protector of their rights.

In dealing with any subject relating to social, economic, or political life, almost the first thought that presents itself is the extraordinary and rapid change brought about by scientific discovery within the past half century. Greater indefinitely than any other material influence upon the history of civilization have been these wonder-working applications of the long hidden forces of nature to the will of man. The increase in wealth and command of physical luxury have come with corresponding swiftness. Grant that the distribution has been unequal, it yet remains that the scale of living of the humblest rank of society, excluding the hopelessly impoverished, is vastly higher than in any other period of the world's history, notwithstanding the indictments leveled against contemporary conditions and however short of the ideal they may fall.

But with these changes has come such an unprecedented strain upon our nervous strength that in many ways we show tendencies that are alarming. As has been well shown by Professor Foerster in his philosophical study of contemporary conditions: We do not control wealth; it controls us. We have lost in great part the vivid religious faith of our ancestors, and, while we are rejoicing in our freedom from belief in any fixed standard of faith and morals, we have failed to reckon the consequences that will follow both to the individual and to the state. Following the lead of certain half-educated theorists, men have been

beguiled into a false theory of freedom. As Foerster well says:

"Willing obedience to all that holds humanity together is always an indication that a man is fit for the highest freedom—he does not seek freedom in outward things, but in inward. He wishes to be free by being above the narrow limitations of his own personal desires, needs, and experiences. The real problem of freedom is, 'How shall I be free from myself?'"

"It follows, then, that the attention of humanity must be brought back to the problem of character, and, since character is only attained by self-discipline and self-knowledge, we must try to bring our theories of education in consonance therewith, rather than with the study of the outer world."³

I have been tempted to bring the results of the study of this notable philosopher under your consideration because I have thought it well to speak of the ethical side of legal education. Two general accusations are brought against the legal profession in these modern days. One is a lack of broad, general education, as well as ignorance of their profession both in its theory and its practice;⁴ and the other a low moral standard, which is believed to pervade the entire bar, from the sordid practitioner in the lowest courts to the great corporation counsel who uses his learning and ability to enable a combination inimical to public welfare to achieve its ends against the spirit of restraining legislation.

To my mind, the correction of the first evil, admitting it to be wide-spread, though the evidence I have drawn upon would seem to confine it to the city of New York, is not difficult of attainment, though it may take a longer time than the more sanguine may hope. The steady lengthening and strengthening of the period of study, and the constant increase of the number of gifted and de-

voted men who are giving their lives to the work of legal education, the appointment of state boards of examiners, and the gradual stiffening of preliminary requirements, are already having their effect and may be reasonably expected to lead to constant improvement.

American professional scholarship has already added illustrious names to the English and continental jurists who, from the beginning of the nineteenth century until our own time, have enriched the history of the law both common and Roman with invaluable contributions. We may thank the inspiration of the law schools for this work in our own country and be glad that it shows no sign of having spent its force. Not less in value, though of unequal volume, have been the philosophical works of other law teachers on special subjects and departments of legal science. The whole tone of American legal scholarship has been keyed up, and names of our contemporaries and fellow members, whom it would not be delicate to mention, since they are living men and our familiar friends, will take their place in time to come with legal authors who are held in constant respect.

But when we shall have attained the ideal, and no man can come to the bar unless he has competent learning and the requisite skill, shall we then have met the other and more serious evil? Obviously not. We may make our standards of legal education high, but the determination of ambitious youth will measure up to them. We have not succeeded in keeping undesirable men from the bar by the intellectual test—at least not in the larger cities; and it is the universal observation that a class of practitioners have come to the bar, through the law schools in many instances, who are totally lacking in the high professional

³See Review of Foerster's Writings, *Dublin Review*, 1910; *Littell's Living Age*, No. 3476, p. 387.

⁴See address of F. R. Coudert, 36 *Am. Bar Ass'n Rep.* 677.

feeling that has been our tradition, whose objects are purely commercial, but who never fail in any intellectual test that may be applied to them.

There was something of great value lost with the passing of the old-fashioned law office, where the accomplished lawyer and gentleman of the old school set an example of dignity and courtesy as well as of learning, and was in close daily contact with the young men who were fortunate enough to be under his preceptorship. Insensibly the students inherited the tradition of a learned profession and an appreciation of the office to which they aspired, that of ministers of justice, bound by the solemn sanction of the oath of admission that they would conduct themselves with all due fidelity, not alone to the client but of equal importance to the court. The times have changed completely. The modern law office, with its stenographers and typewriters and all the equipment of a counting house, impresses the lesson. A sure, confident, and speedy decision of questions involving interests of great magnitude is demanded of the metropolitan lawyer, and little by little the commercial spirit pervades his entire activities. The lawyer who is taken from this atmosphere to a seat on the bench is not likely to prove an elevating influence to the bar of his court. The rapid dispatch of business becomes the first consideration, and the tendency to forget the sacred dignity of his high office sometimes has deplorable results.

It is not that the tone of the bench and bar is lower than that of other professions. On the contrary, the average of faithful performance of duty among the judges of the state and federal courts is as high as could reasonably be expected in a country so new in many ways as our own still is; but by reason of the

addition of extrajudicial duties, the bad odor of politics connected with the elective system, and the undoubted miscarriages of justice that occasionally result from an ultra-technical system of criminal procedure, popular dissatisfaction with the administration of the law has reached a point where it affords a tempting subject for the demagogue, and which he has eagerly grasped. So competent and calm an observer as Ex-President Eliot enumerates, among the causes that have brought the legal profession into discredit, the American practice of electing judges for short terms, and expresses the opinion that the very voters who elect the judges easily acquire the habit of distrusting them.⁵ Certainly there can be no more distressing sign of the times than the growing distrust of the administration of the law and the extraordinary recklessness in seeking to remove ancient limitations on popular emotion.

It is a commonplace that the influence of the legal profession under the growth and development of English civilization has vastly preponderated over any other. Professor Dicey says:

"As all lawyers are aware, a large part, and, as many would add, the best part, of the law of England is judge-made law; that is to say, consists of rules to be collected from the judgments of the courts. This portion of the law has not been created by act of Parliament, and is not recorded in the statute books. It is the work of the courts; it is recorded in the reports; it is, in short, the fruit of judicial legislation. The amount of such judge-made law is in England far more extensive than a student easily realizes. Nine-tenths, at least, of the law of contract, and the whole, or nearly the whole, of the law of torts, are not to be discovered in any volume of the statutes. Many acts of Parliament again, such as the Sale of Goods Act, 1893, or the Bills of Exchange Act, 1882, are little else than the reproduction in statutory shape of rules originally established by the courts."⁶

⁵Address before the Massachusetts Bar Ass'n Dec. 19, 1912.

⁶Law and opinion in England, 360.

And as he wisely observes, while judges are, of course, influenced by the beliefs and feelings of their time, they are none the less guided by professional opinion. They are the heads of the profession. He adds that:

"The duty of a court * * * is not to remedy a particular grievance, but to determine whether an alleged grievance is one for which the law supplies a remedy."

But this is not the popular conception, and it is only too easy to raise a cry against a learned and honorable court, where the emotions of the people have been roused for the redress of some real or imaginary grievance for which the law affords no remedy or for which the proposed remedy is unlawful.

It would be going too far afield to dwell further upon the function of the courts in a modern English or American community. As Professor Dicey shows in the work from which I have already quoted, "judge-made law has tended, owing to the training of our judges, to represent convictions of an earlier date than parliamentary legislation"; but not always so, as where he shows that Lord Mansfield carried out ideas in the field of commercial law which could hardly have been embodied in acts of Parliament.

Yet, notwithstanding the inestimable service thus rendered to the cause of true civilization, there is a well-marked tendency towards a new and different attitude in relation to our courts—one which finds its expression in the proposal to submit individual judges to popular recall, or to override their decisions on constitutional subjects by popular election. Is there not a connection between this dangerous feeling and the gradual lowering of the tone of ethics in the profession itself? Mr. Coudert has expressed the opinion that:

"There are two main causes which largely account for the popular distrust of the law

and lawyers. One of these is the fact that the law of to-day, and especially the judge-made law, is largely out of harmony with real life. * * * In this last generation tremendous economic changes have so modified actual human relations that the American law of to-day reflects the views of the dead rather than those of the living, and is in many respects far behind that of England, France, and Germany."

I am not prepared to say that this statement is not to some extent well founded; but I venture to suggest that, in giving it its proper weight, it is but fair to remember that, so long as judges are bound by the limitations of written constitutions, they cannot give free vent to their individual sense of what may be economically best for the community under conditions that were not foreseen when the constitutions were adopted. A review of the decisions of the New York Court of Appeals in the various cases bearing upon the subjects of cigar making in a tenement house, women's work after night, and workmen's compensation, shows them to have been based upon constitutional interpretations which, whether right or wrong, presented no real grievance.*

But the second of the causes as given by Mr. Coudert is one with which we may justly be concerned, because, as he says, "it relates solely and simply to the ordinary administration of justice between man and man in the courts of common law." He tells us, and his opportunities for observation are not excelled, that the general unpopularity "into which the law, and thereby the administration of justice, has fallen, is due primarily to incompetence both at the Bar and on the Bench." As the Bench is recruited from the Bar through popular elections, where the opinion of the profession itself

* 38th Report A. B. A. 678.

* Recall of Decisions, Henry W. Taft, before N. Y. State Bar Ass'n, Jan. 24, 1913.

counts but little as between the rival candidates, the inadequate education of the Bar extends its bad influence to the court. The obvious remedy is insistence upon "a higher standard of character and legal education for admission."

I submit that the latter of these requisites is receiving due care. While, from the very nature of the act of practicing law, facility and certitude can only come from actual experience in practice, every effort is being made in all the leading law schools to give as much instruction in practice as can be given by academic education. The candidates go before the State Board of Examiners at the end of their course so well prepared that but rarely do they fail in passing. I am not now referring to the peculiar local conditions that prevail in New York, and perhaps to a less degree in other jurisdictions. My own observation is confined to Pennsylvania, where the State Board of Law Examiners has set as high a standard as present-day conditions will permit.

It is, I think, in the elements of high character that graduates of law schools require closer attention. For years the efforts of the American Bar Association have been concentrated upon the perfection of a just code of professional ethics, and success has crowned them. In all or the greater part of the states it has been adopted by law associations, and has in many instances been made part of the curriculum of the law schools. But perhaps because of the low tone of the students themselves, who but respond to the prevailing atmosphere of society, it is too evident that the license to practice law by no means implies necessarily a man of high character. It is interesting to read some of the questions propounded for solution to the Committee on Pro-

fessional Ethics of the New York County Lawyers' Association,⁹ and note the utter lack of high professional feeling that is sometimes shown, though it is encouraging to find that there is at least enough to raise a doubt in the mind of the inquirer.

Since there has come, and apparently to stay, a totally different method of instruction for law students, and hereafter the great majority of them will carry into practice after admission the ideals they have imbibed in the classrooms of the law schools, a responsibility is imposed upon the individual professor to impress them with the primary duty of making ethical considerations of paramount importance. If the bar is to overcome the rapidly rising tide of popular reprobation it must show that the aspersions cast upon it as a body are unfounded, and when the occasional case of unworthy conduct appears among its members be swift to visit the offender with severe punishment. It has been truly said that the lawyer's most valuable asset is his reputation among his own brethren. In no other profession do adventitious circumstances count for so little. The only aristocracy among lawyers is that of learning, intellect, and character. Possessing them, one can aspire to the highest honors of the law; without them, neither birth nor wealth can avail.

With such faculties as American law schools now possess, we need have no fear that, together with the best technical teaching, every effort will be made to impress the students with noble professional ideals. The misfortune is that with the mixed character of our population and the steady influx of races that have none of the traditions that centuries have handed on to those who have

inherited our ancient ideals of private and public honor, men will continue to come to the bar to whom the ethical appeal based on the supernatural sanction

which is at the foundation of all true civilization will be meaningless. Against this danger, both before and after admission, we should do all in our power.

Law Schools and Bar Examinations

By *EZRA R. THAYER*

Dean Harvard University Law School

(An address by Dean Thayer before a joint session of the Association of American Law Schools and the Section on Legal Education of the American Bar Association at Montreal, Canada, September 3, 1913.)

I AM supposed to speak to you to-day about bar examinations and law schools, and if I seem to exalt the function of the law school, or in any way to undervalue the practitioner, I hope you will believe that this is not due to unfamiliarity with practice. I have been trying to teach law for three years, and I have been learning chiefly the difficulty of the task and my own inadequacy to it. If any one says I do not know how to teach law I must humbly concede that he is very likely right. But I do know something about practice. I practiced law nearly twenty years, in a general practice that took all my time and more; I was constantly occupied with litigation and was much in court; and what I say will at least not be based upon ignorance of that side of the profession.

I make no apology for the fact that my remarks will sound like an echo of what you have just heard. For it is a choice between echoing the last speaker's views and saying something less sound and pointed. We must have all been deeply impressed by what Mr. Taft said about the special need of a well-educated

bar at the present time. We are now passing through something of a crisis. This is a time when there is no institution that is not called upon to justify itself. All that we can ask to-day for our most cherished principles is an opportunity to justify them. How can the bar best meet this great task? Roscoe Pound has truly said that in these days when so much is said of conservation there is no conservation more important than the conservation of legal and political institutions. But the question at once comes up, Which are to be preserved? It is the old problem of discriminating the significant and permanent from the transitory and unessential. Which are the things to be preserved as indispensable, and which are to be thrown away as outworn? The difficulty of answering that question may be illustrated by a parable which will speak to any one who has argued before a law court. Suppose yourself to be sitting silent while your associate is discussing the law. You very likely know more about the law of the case than the gentleman who is on his feet—such a division of knowledge between senior and junior

is not uncommon. The argument proceeds easily until the court puts a question, but the question fills you with a justified terror whether he is going to concede the point or deny it. It is hard to say which is the worst: When he concedes a position that it was essential he should attack or when he attacks what he should have conceded. We have all been there. Of course there is no solution for the difficulty except a knowledge of your case; and you must know it pretty well before you can tell what concessions to make. Just so, to compare great things with small, when our profession is confronted with the legal and constitutional problems of the present day—when we are told that the Declaration of Independence is made up of discredited dogmas of a past generation—we cannot safely commit ourselves until we know our case.

How are we to know our case? Certainly not without a liberal education—such an education as will produce a cultivated and learned man. Can such question be answered without a knowledge of economics? Can they possibly be answered without knowing much of history? Without it how can we tell how many of the new things that are set before us are really discredited experiments of the past with no element of novelty excepting the names in which they are dressed? It is idle to hope that the bar can do the work it is called upon to do—and the community is not slow in calling upon us to do many things—unless it is an educated bar. The talk about equal opportunities for all, and giving the young man a chance, is appealing enough. It is easier to give way to sentimentality than to cultivate clear thinking. But we cannot afford to forget that the real question is what is best for the community.

The best thing that a man acquires from a liberal education is modesty; that Socratic wisdom which is the truest wisdom. At the commencement season we hear comment on the college graduate which indicates that modesty is not regarded as his distinguishing characteristic. But I venture to say that it is really his one greatest asset. Of course we all forget pretty much every specific thing that we learned in college. What then is it that we bring away which is worth so much? It is the recognition of the boundless fields of learning that we shall never traverse, of our own littleness beside the rest of the world, of how much better men are all around us. It is the "self-made" man who most lacks that knowledge. The man who knows one or two things and thinks that what he does not know is not knowledge is the really conceited man. And the higher you rise in the scale of education the more likely you are to escape that type of intellectual conceit.

All of this has a special application to a subject that is much in our minds at the present time, namely, the question of procedure. As is well known, our law begins with procedure. Sir Henry Mayne's striking observation about the secession of substantive law in the interstices of procedure, which Lord Haldane quoted yesterday, states the fact picturesquely. It has been finely said that formalism is the twinborn sister of liberty; but the saying tells of an early stage in legal development. Technicality and unreasoned conservatism are in truth the special trait of the primitive creature, both in the growth of the individual and of the community. Any parent knows the rigid conservatism of the very young, and their insistence that everything be done in the same way that it was done before. The analogy holds good with

our profession. It is the lawyer with the slightest education and the least perspective to whom mere forms and arid technicality seem sacred because he was brought up to them. Illustrations of this will occur to any lawyer of experience, but I cannot help mentioning one or two.

At these sessions voices are sometimes raised in favor of a "free bar," and supposed statistics are cited to show that in those happy regions where the practice of law is a natural right of man, educated or uneducated, the quality of the bar is as high as elsewhere. Now it may be an accident, but it also may not, that it is such an atmosphere which evoked from a court of last resort the luminous decision that when the issue was the age of a human being the inspection of that human being by the jury could not as matter of law be any evidence of his age, and therefore no matter how ancient his appearance the verdict that he was over 21 must be set aside unless supported by some other kind of testimony. The ground of this decision was, forsooth, that there was no way in which his appearance could be made a part of the record on appeal; as if the sole function of the judge and jury were to prepare a record for an appellate court.

That decision was the product of a "free bar"; but the mental attitude of which it tells is unhappily to be found elsewhere. Not long ago I went before a legislative committee in my own state to support a bill simplifying procedure. The reforms sought were very mild, for procedure in Massachusetts is simple and rational, and the changes needed were relatively slight. But as we explained the sections, one after another, it became evident that to some members of the committee we seemed to be dangerous and revolutionary persons who were attacking the very keystone of the arch.

When we came to the fifth section of the bill this is what happened: The section dealt with appeals in equity. Our practice provides for a commissioner, whose stenographic report contains every word spoken in the proceedings, including exceptions to evidence. But our court had found itself constrained by the language of the statute to decide that exceptions to evidence were not before the court on appeal, although the report reciting the exceptions was a part of the record. Accordingly to carry up these exceptions a bill of exceptions was also necessary. Such a bill of exceptions was a mere form reciting the same matter already contained in the report, and the only change proposed by our fifth section was the abolition of this formality, permitting exceptions to evidence to be taken up, like all other questions of law and fact, by the commissioner's report. In my simplicity I supposed that this section would not be criticised, and I presented it as rather a matter of course. But a lawyer on the committee—a gentleman of some prominence, whose respectability and zeal exceeded his legal education—took a different view of the matter, and questioned me long and gravely. As he questioned his indignation at such radical departures waxed warm, and he presently denounced the provision thus: "That, sir, seems to me a dangerous section. I call it a *wicked* section." The mental attitude which discovers wickedness in such a change is a sort of conservatism which does our profession great harm, and it is a sort of conservatism not likely to be found in an educated lawyer. It is the same sort of conservatism that you find in a deputy sheriff when you are obliged to argue a law point with him, and find yourself wishing that he had not possessed himself of that modicum of legal knowledge

which has been described as "just enough law to pervert the understanding."

Mr. Taft referred last night in impressive language to the fact that the courts drawn from the best educated bars have been the most liberal in matters of procedure, and the least hampered by mere technicality. It is natural that this should be so; and it is a weighty argument in favor of maintaining a high standard of education for admission to the bar.

Another aspect of the matter, to which I will refer but briefly, was forced on my mind yesterday as I listened to the admirable address of the Chairman of the Section of Legal Education, namely, the relation of education to the question of moral character. Any one can see the importance of moral character in an applicant for admission to the bar. But the difficulty of discovering the applicant's moral character is no less obvious. Mr. Smith drew a charming picture of the old-fashioned law office—a picture which to many young men of the present day must seem quite unreal and remote. The passing of that old-fashioned law office, the loss of the old professional standards, the blurring of the *fact* of professional standards, are things that all of us must deeply regret. Like many other beautiful and noble possessions of an earlier generation, these pass with the coming of a new order. In the old-fashioned office a young man naturally acquired the right professional attitude, the "Sittlichkeit" of which Lord Haldane spoke in another of its aspects. How is a young lawyer in a great city to-day to find a substitute for this school in which his father gained his professional standards? No law school would be justified in saying that it could take the place of

the old law office. But I do think that some of the flavor, much that he can now get nowhere else, can be found in the right kind of law school, and that the law schools have a duty and opportunity of real service to the bar in stimulating the young lawyer's moral tone, as well as in training his mind.

Passing from these matters to some specific problems concerning bar examinations, one finds himself in danger of lapsing quickly and deeply into truisms. We are all in favor of high standards. We acclaim them loudly and we are all in accord. "High standards" is a comfortable phrase, but it does not advance us far, and it is even possible that there is sometimes a slight flavor of cant in our use of it. The words "high standards" do not tell much. What do they really mean with reference to this subject? Certainly high standards are not disclosed by the mere fact that many candidates are rejected. The author of a detective story has an advantage over his reader in guessing its conclusion, and nothing could be easier than to construct an examination which *nobody* could pass. The poorest lawyer could do that. The rejection of candidates is no measure at all of high standards until we look into the rejected candidates on a qualitative and not a quantitative basis.

What sort of examination should we have? It cannot be a proper one unless it tests the candidate's grasp of fundamental principles and the lawyerlike quality of his reasoning. But these are not going to be disclosed by calling on him for memorized formulæ or for abstractions of any sort untested by concrete applications. The genius of the common law has always been its quality of sticking close to facts and rejecting all philosophizing and theorizing which did not fit the realities of life and answer

the test of practical usefulness. And it is only by his ability to apply what he has learned that the candidate's legal capacity will be shown. The mark of his lawyerlike quality will be his ability to discern the legal significance and legal possibilities of a new set of facts.

Now if the examination is to be a test of the candidate's understanding of fundamental principles and his power of legal reasoning, important qualities are demanded in the examiner. He cannot be expected to frame a searching examination into fundamental principles unless he knows a fundamental principle when he sees one; and his judgment of lawyerlike reasoning will not be valuable unless his own mental processes are of that description. A little reflection will show that, in the present state of our law, framing a proper bar examination is a task which calls for qualities of a high order. This makes the selection of a competent bar examiner a hard problem—I believe the hardest problem in our whole subject. We have heard so much of the qualifications of the candidate for admission—a less difficult matter—that I want to invite your attention particularly to the other side of the question—the qualifications of the examiner.

It must be observed at the outset that the difficulty comes chiefly from the attempt to keep standards high. Any examiner can get along pretty well if the examination is made easy enough. But as you aim at higher standards and try really to separate the sheep from the goats, the difficulties of the task increase in geometrical ratio. The teacher of law has peculiar opportunities to judge of its difficulty, because he has a similar duty, which weighs heavily on his soul, of constructing examinations and marking them. A comparison of his work and the bar examiner's is suggestive.

The teacher's work in preparing an examination is a hard business. To make it severe enough without being too severe, searching without being unfair, requires great pains and much common sense. The teacher must work hard at the problem or he is not doing his duty by his pupils. Yet his difficulties in preparing an examination are child's play when compared with the bar examiner's. The law teacher has taught a particular subject for a year to the student. His law may be good law, or it may be bad law. It may be plain straight-away law, or it may be fantastic law. It may have the accent in the right place, or it may have it in the wrong place. But at least it is a coherent and articulate body of law—he could not have stood up before the questions of his students for a year if it were not that. The teacher has his own views as to structure and relative importance, and any proper student can separate the essential from the unessential and understand *all the law which that teacher teaches*. The question what are the fundamental principles thus solves itself; pro hac vice they are the principles the teacher has taught.

A simple illustration will show how different is the position of the bar examiner. Time was when an educated man could read everything. Suppose in those days there had been an examination in general culture, to establish the candidate's status as an educated man. The examiner would have had only the task, comparable with the law teacher's, of selecting with fairness and good judgment from a field familiar to both examiner and candidate. But suppose you had to frame such an examination to-day, when the most learned can know but a small part of the world's learning, how would you decide between the conflicting claims of different subjects, to

say nothing of the endless questions of taste and scope and proportion arising within each subject? Such an examination would be an absurdity in any but the most competent hands.

The analogy to an examination in law is not so strained. When it was an examination in Blackstone or even an examination in Kent the examiner's problem was relatively simple. But now we have a body of law of which no man can know the whole, or even, quantitatively speaking, a large part. The complexity and extent of the law of a community depends of course on the richness and variety of its life; and it is hard to bring home to ourselves the prodigious growth of our law within a few decades. And the capacity for separating the significant from the unimportant—of discriminating those parts of our statute and case law where exact knowledge is essential from those where it would be scarcely creditable—means broad knowledge and delicate judgment.

It is just here that the modern law school has a function which should not be overlooked or minimized. I do not mean to belittle the practitioner, and I know how superior the practitioner is to the teacher in some points. I recognize, too, how much of a real lawyer's training must be gained in practice—the issue between the old-fashioned views and those that now prevail is only whether the school of practice is a beginner's school or a finishing school. But with all proper allowances, I submit that the practitioner who has not a sympathetic understanding of modern law school instruction cannot be expected to possess the broad point of view and the legal sense of proportion which our special problem requires. From the day a man begins his practice, especially practice in a large city, he finds himself drawn con-

stantly into certain special kinds of work, and before he has been at the bar ten years, no matter how general his practice, there are many great fields of the law of which his knowledge, if he ever had any, has disappeared or become atrophied. And naturally the things he is handling assume to him an undue importance and his sense of proportion suffers accordingly. Moreover within his own field his constant activity, if he is a good lawyer, is putting the microscope to each of his cases and knowing everything about them that can be known, everything of those facts and of the law *so far as it applies to those facts*. But that last qualification, the limitation to *those facts*, has an important significance. Those facts probably raise a very narrow point—a point in the strict mathematical sense of the word, without breadth or thickness, in its relation to the law as a whole. The very thing he is not called on to consider is the general body of the law, the relation of part to part, its structure, its symmetry or lack of symmetry; the law, in short, and its general relations, as a science. Of course he may study those matters, but if he does it will be an avocation, and he is likely to choose his avocations as far away as possible from his office—in art or music or biology rather than in jurisprudence.

With a teacher of law the situation is just the opposite, and the difference is one likely to bewilder a teacher who comes fresh to teaching after years of practice. He finds himself at cross purposes with his students, each failing quite to understand the language of the other, and each seeming to the other to have his emphasis distorted and to waste time on "fine points." What the student brands as a "fine point" is the lawyer's thorough analysis of the facts. These do not much interest him. He looks on

facts in a rather superficial and uninterested way, and this is natural enough, for the school of practice alone can teach him how to handle facts, or reveal the magic and fascination of their unfolding. And so getting to the heart of a case in a workmanlike way may merely bore a good student. But his handling of a principle of law is a very different thing. Here he is instantly alive, and his zeal and the uncompromising quality of his logic breed the "fine points" which the teacher would fain temper with judgment—that characteristic product of maturity. What the student wants is to know all about the subject in hand. He wishes to trace each principle to its logical result, and he is merciless to inconsistency. He delights in long reaches of thought, and he is bent upon symmetry, whether it is historically or practically attainable or not. To the teacher is denied the refuge, so grateful to his brethren on the bench and at the bar, of confining himself to the facts in hand and eschewing dicta. The dicta, and all the paths into which they lead, are just what the students are seeking, and rightly. As a result the teacher is constantly driven to think of his subject as a whole, to consider the relation of its parts with one another, and to determine questions of structure and proportion. These, together with proper methods of investigation and reasoning, are the very things which he aims most to give his students, in order that, when the time comes in after years for them to forget all the detail, they may still have such a grasp on fundamental principles, and right habits of thought may be so fixed in them, that they will be able to find the landmarks, and will never be straying in an uncharted country.

It is such considerations as this which justify the belief that a bar examiner

needs an understanding of modern scientific legal instruction in order to do his work aright. It is a work, too, that makes a sharp demand upon his conscience, and that conscience should be a sensitive one. In discussions such as this we sometimes hear assertions that the young man is not treated properly by our system. Now if the young man is examined by a bar examiner whose legal understanding is inferior to his own, if "the light shineth upon the darkness and the darkness comprehendeth it not," then he certainly is not treated properly. How far such injustice has been committed in the past is largely a matter of conjecture. The bar examiner's misdeeds are generally as securely buried as the doctor's. But disquieting glimpses have sometimes been given by examiners who have had the intrepidity to publish their questions together with the officially correct answers. Herein the reader may see wonderful things, suggesting a sum total of possible injustice not agreeable to contemplate.

It is a satisfaction, on the other hand, to reflect that in some states the work is excellently done. This is certainly true in Massachusetts, where the board has shown how much may be accomplished by conscientious and painstaking co-operation. The members consult together at each step, and thus supplement and balance one another. Their work has been systematized in so interesting a way that I hope the chairman, if he is present, will give some detailed account of their methods to this meeting.

Do not understand me as asking any favors for the law schools. They ask no favors, and, if they are good schools, they need not ask them. A proper law school should keep the standard for its degree so much higher than it is possi-

ble, as a practical matter, for the bar examiners to keep the standard for admission to the bar, that its graduates should find themselves in no difficulty. Do not understand me as suggesting that teachers in law schools should serve as bar examiners. They have troubles enough of their own in the way of marking examination papers without taking on any more. And do not understand me either as approving a system by which graduates of law schools would be given any preference over other candidates. In our school we disbelieve in the notion that the state should show favor to the graduates of any particular law school or of law schools in general. Much has lately been said in other branches of education about the value of independent examinations by outside examiners. The bar examinations provide just such an opportunity, and the law schools should welcome the test. What I do say is that the courts and the bar can no more get the best results in testing the intellectual qualifications of candidates for admission without intelligent and sympathetic co-operation with the law schools than a court could get proper results from the disbarment work of the Bar Association without such co-operation with the Grievance Committee.

In closing I cannot refrain from mentioning two aspects of the subject which justify satisfaction and encouragement.

In the first place, this Association of American Law Schools contains great possibilities of good. An organization of

the best law schools, working together intelligently and harmoniously throughout the country, is in a position to do much to establish what is fundamental, structural, and national in our law, and to prevent local variations or eccentricities of particular schools from receiving undue emphasis. We shall all of us gladly do our part to strengthen the hands of this Association in every way we can. Nothing can do more to raise and to maintain proper standards for admission to the bar.

Finally, we can clearly see that we are in a transition period, and are moving rapidly. While we muse the fire burns, and some things are becoming extinct while we are talking about them. When I came to the bar, scarcely twenty years ago, the product of modern legal education was so recent as hardly to be seen on the bench, and only in the younger members of the bar. And as there is a natural tendency to think that a system which produced us must be a pretty good system after all, doubts as to the value and the permanence of the new order of things in legal education were widespread. But the modern law school is now a perfectly accepted thing, and the opposition is a constantly dwindling minority. A little while and "time, like an ever-rolling stream," will bear away much of what remains. To a new generation of lawyers, educated in law schools, all that I have said to-day may well appear only the elucidation of the obvious.

Meeting of the Association of American Law Schools—1913

THE thirteenth annual meeting of the Association of American Law Schools convened at the Windsor Hotel, in the city of Montreal, Canada, on Monday, September 1, 1913. After the meeting was called to order by the President, Henry M. Bates, dean of the University of Michigan Law School, the roll of the schools belonging to the Association was called. The roll disclosed the following representatives in attendance:

Cornell University College of Law: George G. Bogert, Frank Irvine, Alfred Hayes.

George Washington University Department of Law: Charles Noble Gregory, Walter C. Clephane, Everett Fraser, H. C. Jones.

Harvard University Law School: Ezra R. Thayer, Roscoe Pound, Samuel Williston.

Indiana University School of Law: E. G. Hogate, A. H. Throckmorton, Charles M. Hepburn.

Leland Stanford, Jr., University School of Law: Wesley N. Hohfeld.

Northwestern University School of Law: John H. Wigmore, F. B. Crossley, C. C. Hyde, H. M. Scofield.

Ohio State University College of Law: William B. Cockley, A. H. Tuttle.

Pittsburg Law School: Samuel M. McCormick, A. M. Thompson, W. S. Moorhead.

St. Louis Law School: T. Williams, W. W. Keyser.

State University of Iowa Law School: Henry W. Dunn.

Syracuse University College of Law: M. L. Walters.

Tulane University of Law: G. H. Robinson, D. O. McGovney.

University of California School of Jurisprudence: G. H. Boke, A. M. Kidd.

University of Chicago Law School: Henry A. Bigelow, Ernest Freund, Walter W. Cook.

University of Colorado School of Law: John D. Fleming.

University of Denver School of Law: Hugh McLean.

University of Kansas School of Law: J. W. Greene.

University of Kentucky School of Law: W. T. Lafferty.

University of Michigan School of Law: Henry M. Bates, E. C. Goddard, E. R. Sunderland.

University of Minnesota School of Law: William R. Vance, Edward R. Thurston, Frederick H. Stinchfield.

University of Missouri School of Law: A. Ross Hill, Manley O. Hudson, Selden P. Spencer.

University of Nebraska School of Law: W. G. Hastings.

University of North Dakota School of Law: R. L. Henry, Jr., H. H. Bronson.

University of Pennsylvania School of Law: William Draper Lewis, Francis H. Bohlen, William E. Mikell, D. W. Amram, Ralph J. Baker.

University of South Dakota School of Law: Marshall McKusick.

University of Southern California School of Law: Frank M. Porter.

University of Wisconsin School of Law: Eugene A. Gilmore, Henry S. Richards, E. G. Lorenzen, Burr W. Jones, Henry W. Ballantine, Eldon R. James.

Western Reserve University School of Law: Walter T. Dunmore.

Yale University School of Law: William Howard Taft, Henry Wade Rogers, Simeon E. Baldwin, John K. Beach.

Oklahoma University School of Law: J. C. Monnet, W. A. Seavey, J. B. Cheadle.

University of Texas Department of Law: Robert E. Cofer.

Vanderbilt University Law Department: W. K. McAlister.

After the reading of the paper on "The Teaching of Practice and Procedure in Law Schools" by Mr. Sunderland, of the University of Michigan (see page 357 of this magazine), the following discussion took place:

Henry W. Ballantine, of the University of Wisconsin.

It is not surprising that the greatest difference of learned opinion should exist on this subject of practice courts, for the reason that we are all apt to have very different things and very different functions in mind when the practice courts are mentioned. It is a problem of the utmost importance and delicacy to ascertain what is the true function and aim in conducting practice courts. If they are thought of merely as imitation courts, mock courts, to conduct a species of parlor dramatics, no one can be expected to take them seriously. Prof. Sunderland's conception of the function of practice courts is, as I take it, that they are properly a supplement to a course on trial practice, and also a means for coordinating the various branches of procedure, pleading, evidence, and practice—putting the entire machinery of the law into harmonious operation.

It appears to me that Prof. Sunderland

has performed a signal service to the cause of legal education in working out in a large law school, under difficult conditions, a scientific method or system for conducting practice courts. Other schools may have originated something similar, but I do not happen to be familiar with them. This paper appears to me to be the most philosophic and practical exposition of practice courts that has yet been announced—the first, at least, that I have heard. The idea of dealing with real cases, cases that are actually arranged and enacted, is important in eliminating the objections so frequently made to the artificiality of conducting examinations and giving evidence of facts which are purely suppositious and imaginary, and exist only in an arbitrary statement. It eliminates the objection to the absurdity of the cross-examination of witnesses as to facts which they have never observed, but merely learned out of such a prepared statement. It adds life and human interest to the trial when it is based upon actual transactions.

One point that I should like to suggest is that perhaps there may be a tendency to expect too much of the practice court; that is, to impose too heavy a burden upon those who are conducting it. It is too much to ask of the practice court alone to teach the art of pleading, the art of introducing evidence, the art of conducting the examination of jurors and witnesses, and the art of drawing suitable instructions on the law. These matters ought to be taken up in various courses. For instance, in the course on evidence the matter of the examination of witnesses might be practiced; in the course on pleading, the matter of drafting pleadings may be attempted; and in such courses as torts, contracts, and damages valuable training may be obtained by requiring the student to draft up instructions stating briefly propositions of law as applied to particular statements of facts.

For my own part I believe the true function of the practice court is not so much, perhaps, in teaching procedure, useful as it may be along this line, but in developing independence, confidence, and initiative in the working up and handling of a case as a whole, learning the correct methods and habits of research and preparation upon which the success of an all-around lawyer will so largely depend. The trial itself as conducted in a practice court is by no means the main point, although perhaps a necessary stimulus. In practice one finds, as one meets the young law graduate, that lack of accuracy, thoroughness, and patience are apt to characterize the preparation of the beginner, as contrasted with the old practitioner. The young man is in a hurry to rush into court without adequate preparation.

This suggests another point: That one must not attempt to rush through a case at a single session. Cases should be taken up

step by step, with all the precision and accuracy which can be insisted upon. No trial should be permitted to begin until the witnesses have been consulted and until an elaborate trial brief has passed the criticism of the instructor.

The objection will, of course, be made to practice court work that it is impossible to take up such work in the law schools; that it occupies too much time. This is a serious question; but, if the work of the practice court be reduced to two cases per man in the third year (which would seem to be a minimum certainly), we should be able to find the time for at least this amount of practice court work. Surely we now devote a disproportionate amount of time to certain subjects as compared with others; and possibly by some rearrangement of the curriculum, as suggested by Dean Bates, we would economize enough time to take up this work, and at the same time cover all the ground which we now cover.

Are we not following at the present time a somewhat hopeless delusion in trying to cover too great an area of the field of law? The time of the student is now occupied in reading various assignments made by different professors in different casebooks, so that he is largely engaged in the mechanical process of reading, with little chance for independent thought. It seems to me that we are swamped with cases. Could we not, make these casebook methods a little more selective, devoting more time to the elaboration of the crucial problems, and omitting some of the minor matters? It is the aim of the law school to develop a legal mind, to train a student to work out legal relations in all their phases, and to handle law as a science.

Are we not, however, in danger of falling into something of a rut with the case system of instruction, excellent as it is? We follow the same mechanical routine day after day, course after course, and year after year, reading so many pages of judicial opinions per day. Is it not possible to introduce a little more variety into the legal diet? Dean Wigmore, for instance, in some of his recent casebooks, has introduced a considerable amount of problem material, old examination questions, and brief abstracts of cases, without stating the result. Now, by making our casebooks more brief, by introducing problem material after the manner of books on mathematics, and by giving out such work as the drafting of instructions, we may require a process of precise, creative, individual effort, such as is done by an author in writing a book, by the editors of the law reviews, or by a lawyer in preparing his cases. I believe the case system may well be supplemented by problems, instructions, and other reports, along with the regulation study of cases.

Finally, a suitable amount of practice

court work will afford a good variation of method for all-around development. There is certainly an urgent demand for such work on the part of law students. That law school is certain to prosper—at least in attendance—that has a reputation for good practice court and procedural work. The great danger, of course, is that such activities will prove too popular and distracting. They must be kept in proper subordination.

The law school now refers its students to an apprenticeship in the law office for almost everything except mental training and general legal theory. But the law office no longer has the time or inclination to instruct apprentices in practice or procedure. After such training as has been suggested, the law graduate will not find himself entirely helpless when he is confronted with the operations, the papers, and the problems arising in actual practice. I think this may be done without any real interference with what we now aim to accomplish.

It appears to me that no hope can be entertained of making any radical improvement in law school instruction by any method which merely aims at imparting more legal information, whether by lectures, or textbooks, or cases. It is a hopeless delusion—like dipping up the ocean with a sieve. The only hope of any great improvement is, I believe, by some plan which will call forth more effort on the part of the student, which will make the student do more for himself, which will in some way—I do not profess to say just how—develop his power and ability, his habits of research and initiative, his resourcefulness and ingenuity, which will call out the creative faculties of the man, and enable him not only to handle his own problems, but to assist in improving the administration of justice, and in meeting the social needs and demands for which creative leadership is now so much wanted.

Roscoe Pound, of the Harvard University Law School.

I do not know that I can contribute anything of value to this discussion, except possibly one suggestion. In Prof. Sunderland's admirable paper we were told that the law schools have neglected the subject of trial practice because they have not appreciated what it really was. I submit that the reason is rather an historical one. Trial practice in the sense in which it was so admirably set forth to us is a subject which really is subsequent to our law schools, whereas all other subjects had developed in considerable measure at least before our law schools. Pleading was pretty well developed at law and in equity before the era of law schools began in 1817.

We must remember that our American law really begins at the Revolution—in fact, not

until some time after. Our reception of the common law is much later than we have commonly thought. Evidence was developed in the first quarter of the nineteenth century pretty thoroughly. But trial practice, in the sense that we have had explained to us to-night, was developed in the United States after 1850. It reached its zenith about 1875; it began to decline about 1900; and I undertake to say it will be steadily of less importance in the development of our law in the future.

Now, why is that? It is because we made the great mistake in most of our jurisdictions of taking away from the trial judge his common-law powers. Consequently, all this technique of instruction of juries became of very great importance—more so in some states than in others. Then from 1850 on we took away the independence of the judges. We made them elective practically all over the country. At common law, the judge was the center of the courtroom; now counsel became the all-important factor in the trial, and the judge became a sort of wooden Indian, who sat up there, dignified, but of very little practical consequence.

There was where this subject of trial practice began to be important. We had works on pleading before and something on evidence; but you will look in vain for all these minutiae, the statutes as to venire and drawing of jurors, the examination of jurors with respect to challenges, the conduct of counsel, just how you should object when opposing counsel goes beyond what he should do, and how you should move for a new trial. All these details developed because we had turned juries loose by cutting off the common-law powers of the trial judge, and we had to devise some means of getting away from the verdict which resulted under such circumstances. So we developed all this minutiae of trial practice which has assumed a tremendous importance in the books.

There is a very noticeable movement in the books from 1900 on to get away from this overgrown body of rules, and a coming back to the notion that these are largely matters of discretion, that the important thing to advance is the merits of the case, and that after all it is not so important that the machinery revolve in exactly the method which judicial experience, as it is said, has prescribed. Now, I do not deny the importance of this subject, but I suspect that the reason why law schools have not taken it up is that it is quite a departure from the common law, on which our whole legal education is based; that it was not present as something existing when the law schools were founded, and consequently it has not arrived yet at such a stage that the law schools could very properly deal with it.

While I do not question that common-law procedure ought to be dealt with no less than equity procedure which has been taken

up generally in law schools, I think it is quite possible for us to emphasize unduly this matter of trial practice; and if we are patient we may find that we can get along in another decade pretty well in the paths in which we have been going.

Epaphroditus Peck, of the Yale University Law School.

What was said in the introduction by Prof. Sunderland would indicate that the proposition is to enter a very large new field. When you come to consider, however, that procedure as he described it includes pleading and evidence, and includes not only pleading, but common-law and equity pleading, all of which, of course, we are already teaching, it results that the proposition for a change is not so great after all. The specific things that are advocated, and which constitute an addition to the field already covered, is what in many law schools has been spoken of as trial practice, and the magnifying and enlarging of the work of the practice court.

I have for ten or eleven years been teaching procedure to the extent that it is done in the Yale Law School, and for a considerable part of that time I have had the practice courts of that school under my charge. I confess that my ideas do not altogether agree with those of Prof. Sunderland.

It used to be thought that valuable work in a practice court could be had by putting out printed statements of fact. Prof. Sunderland says that a trial on statements of fact is so unlike anything that actually occurs in a court that it is practically of no value; that you cannot examine witnesses on a printed statement of fact, and still less can you cross-examine them. The whole thing has an artificiality about it which makes it unreal, he says.

Now the suggestion is made that you should put up a little play, that you should enact a series of facts, have the witnesses present, and so on. Well, I have tried to do that, and in my experience the result is very nearly as artificial as a mere statement of fact. Your witnesses will come into court, having seen the specific facts which furnish material for eight or ten questions that are asked on direct examination. They can testify in answer to those questions, and bring out those facts; but, when you get to that limit, where is the opportunity for a cross-examination that is anything like a real cross-examination in court? They have no real knowledge of any real facts, there is no field for an examination into the character and trustworthiness of the witnesses and their bias, and any genuine cross-examination is, therefore, absolutely impossible. In other words, just as soon as you get beyond that little bundle of enacted facts, you run into a field that is purely imaginary.

It is also artificial, because the witnesses are so unlike real witnesses; and a student lawyer, examining student witnesses, does not meet at all the problems that he would come up against in an actual trial with witnesses, some of whom are stupid, most of whom are biased, some biased just as fatally in your favor as others are biased against you, and with all the imperfections of human nature to work upon and contend with.

It seems to me that, even when you have enacted your little set of facts, you are still on such an artificial basis that your trial practice court is not enough like an actual trial to give the students trial experience of any real value.

I think it is true, as has been said by Prof. Pound, that trial practice tends to diminish very rapidly in importance with the tendency to increase the discretion of the court. The English practice, which has been spoken of as a model, is one in which the importance of questions of practice is largely eliminated by the fact that the trial is conducted with such complete control in the hands of the judge. Prof. Pound's statement does not need to be amplified I think.

But it seems to me that there is a definite field where procedure can be taught, and where it is not generally taught. There is a well-related group of subjects of great importance and of a scientific nature, what one might call the common law of procedure, the law of the courts and the proceedings before them. To my mind it covers this group of subjects, namely, the jurisdiction of courts, the mode of obtaining jurisdiction over the person by service, the mode of obtaining jurisdiction over the res involved by attachment, or by its location within the jurisdiction of the court (which, of course, sometimes in divorce actions depends on the residence or domicile of the parties, and involves a most important and difficult class of questions); the jury, and that, of course, brings within the field of the subject the history of the jury, its selection, challenges, the power of the court over the jury and its verdict, etc. Then a very important subject is the form of the judgment, and its effect as *res judicata*. While the statutory practice is so different in every state that it can hardly be taught in a school of national scope, certainly there is still an important group of subjects that cover what one may call the common law of judicial procedure.

It seems to me that the teaching of trial practice pretty nearly amounts to teaching the art of advocacy, which, as Prof. Sunderland said, cannot be taught. I have never been able, nor have the others in the Yale Law School that have tried it, to conduct practice courts with anything like that degree of success and that field of usefulness that seems to have been found in some other schools.

Walter C. Clephane, of the George Washington University Law School.

I have been particularly interested in what Judge Peck has just said, because of the fact that his experience is so different from my own of sixteen years in trying to conduct a moot court at the George Washington University Department of Law.

We have had no difficulty at all in conducting a thoroughly organized moot court, with what I believe to be excellent results, upon printed statements of facts, without the necessity of really enacting the drama upon which those statements of fact are supposed to be based. For instance, we hand a student a statement of cases. These are cases that have actually arisen in practice. We outline to the students some of the facts, and we suggest certain lines of attack and of defense. Then we leave to the students the formation of the line of attack or the line of defense, as the case may be, both in pleading and in evidence. We require of the students that the pleadings shall be prepared and the issue reached just as it is in actual court work. Then we require an actual trial of the case. This presupposes, of course, some definite system of procedure which must be followed in trying that case. What the system is, I think, is of very little moment; but whatever system is selected is adhered to rigidly.

The value of these practice courts seems to me to consist in this: That the student in his course becomes familiar with the atmosphere of the courtroom and learns how to conduct himself in a courtroom. For that reason we pursue a system quite different from that advocated by Prof. Sunderland. We try to make the moot court as closely akin to a real court as it is possible to make it. We have the judge, the clerk, the crier; we have enough courts to divide the classes up into juries, each student having some definite part in the work assigned to him. He is either counsel or crier or juror or witness. So that his actual interest is kept up in the case from start to finish. In making his attack after the issues are defined, he must go to the jury as he would in an actual courtroom. He introduces his witnesses. Of course, the facts related by the witnesses are fictitious. The students very quickly enter into the spirit of the case, and they put in no evidence that would not be proper to raise the issue that is defined. We have a system by which, if any evidence should be offered which tends to develop another issue, objection may be made on the ground that it is contrary to the spirit of the statement of facts. The objection is ruled upon by the judge, and the case goes on.

It is true that there can be no adequate cross-examination, and consequently we lack a great deal in that respect. But six-tenths

of the art of cross-examination is knowing when to stop. The student very quickly finds out when to stop his cross-examination of these witnesses on these fictitious facts. In examining those witnesses, and in cross-examining them, he is bound by the rules of evidence, and there is where the value of the practice court comes. A question is asked which is objected to—and, if a proper objection is not made, the instructor may so inform the student—the objection is argued, and the court rules upon it. The rules of evidence are practically demonstrated in this way. Then comes the argument to the jury, after the preparation of instructions and their passing upon by the judge. Then comes the verdict.

After all that, then we give instructions to the students as to what they ought to have done or ought to have omitted doing on one side or the other. We find that, if we interrupt the trial to give these instructions, it gives the other side an unfair advantage. We find that the students feel that all the theoretical branches of the law which they have learned are crystallized in these practice courts. Of course, we have our regular course on evidence, and our course on pleading, and our course on practice, and our course on criminal procedure and on legal ethics, in which theoretical instruction is given in the classroom; but when it comes to the courtroom it is all done in exact accordance with the actual rules of practice.

I think this practice course is most valuable. I know our own University is delighted with it, for it has worked well. It seems to be generally conceded that there is a necessity for a reformation in the legal procedure of the United States; but the American Bar is not going to reform legal procedure, because it has not time to do it. By the time that the American lawyer has learned what legal procedure is, he then has no time to go to work to reform it. The real reformer in our legal procedure is going to be the man who has received his impetus in that direction from something which has been taught to him in the law school. I realize that some of the most eminent schools in the United States believe conscientiously that the time in a law school is too short to teach anything beyond the theory of the law. At the same time, if a number of those schools, or if any school, is to make jurists, then let us make jurists who will be able to do for the country what the country demands; and the country demands nothing more urgently than reform in the very things which I think some law schools leave absolutely untouched.

Epaphroditus Peck, of the Yale University Law School.

May I say just one more word. I think there is no more question that in one respect

very useful practice can be had upon a pointed or agreed statement of facts and that is in drawing the pleadings and in developing and trying the questions of law. The doubt I have expressed is not as to the trial of questions of law nor as to the practice in pleading, but simply as to the practicability of the trial of questions of fact in such a way as to be of any considerable value.

John D. Fleming, of the University of Colorado Law School.

I desire to express my appreciation of the words of the gentleman from George Washington University. We have a system in moot and practice court work almost identical with that outlined by him. So it would be useless for me to go into details. It has occurred to me, however, to say that we have been reasonably successful in the school with respect to our own practice course.

Possibly one difficulty has not been voiced, and I shall put it in the shape of a query. Does not the want of success with the practice court in some of the larger schools rest as a basis upon the fact that, to use a homely phrase, they are too top-heavy? I can readily understand why a school having 100 or 150, or perhaps 200, students can carry on a practice course with success with a moderate equipment; but when you come to increase that number to 500 or 600 students, or larger, the moot court or the practice course might fall to the ground by reason of its own corporosity, unless the equipment be increased greatly out of proportion.

I proposed this question more, perhaps, as a query to be pondered than one to be answered here. We have carried the work on in our school with 100 students with apparent success, and along the lines mentioned by the gentleman from George Washington University.

David Werner Amram, of the University of Pennsylvania.

I wish to say this discussion is suggestive of many points. I shall speak of only one of them. The practice court is intended to replace the instruction gained under the old system of apprenticeship in law offices, and in so far as the students in the law schools are taught in the practice courts to prepare papers, to look up questions of law and prepare briefs thereon, to attend the court and watch trials and hear arguments and report thereon, the practice court may profitably be used as an adjunct to the regular work of the law school. But in so far as the stress in the practice court instruction is laid upon the actual trial of cases by the students, I am of the opinion that the advocates of this method of instruction fall into error. No student at law, under the old system, was

ever permitted by his preceptor to try the case for him. He did not gain his experience by trying cases, but by watching his elders at the bar try their cases, and by studying such trials, especially those that were conducted by his own preceptor.

It has been said at former meetings of this Association that the experience of the students in a trial of cases in the practice court helps them to overcome their natural diffidence. I have no doubt at all that the trial of one or two or three cases in a practice court is entirely valueless for this purpose. It is a well-known fact that young lawyers who are naturally afflicted with diffidence do not overcome this handicap until after a very long period of actual experience at the bar. Nor am I able to see how, under the best of the systems devised for practice court instruction, the results justify the means. The analogy of the scientific laboratory is misleading, for in the laboratory the student is dealing with precisely the same materials and confronted with the same problems as outside; but in the practice court the student is dealing with fictitious problems, different in every way from the problems that are presented to a lawyer in actual practice.

It may be of interest to state that I have found the Seminar well adapted to the teaching of practice. The method that I am using is a simple one. The system of instruction is divided into three parts: First, readings of selected cases and statutes, as well as references to approved books on practice; second, a lecture delivered to the entire class upon the subject-matter covered by the reading assigned for that particular hour; third, an informal discussion of the subject-matter of the reading and the lecture by the students in the Seminar. For the purposes of the Seminar the class is divided into small sections, each of which meets me one hour a week, during which the students present their analysis of the cases read by them and we review in detail the subject-matter of the lecture and touch upon other matters of practice cognate to the subject. Legal papers are prepared for these Seminar hours and presented for criticism. Students who have been assigned to watch cases in court, or to prepare on some particular matters of prac-

tice, present reports which become the basis of discussion. In short, I have during these Seminar hours practically all of the work that is usually called the practice court work except the actual trial of cases, and as to this I am convinced that the study of a trial conducted by competent counsel in court is very much more valuable to the student than his own participation in a mock trial in the practice court.

From my investigation of the methods of law I do not hesitate to say that the system developed at the University of Michigan is the best that has ever been devised, but its value in so far as it attempts to teach actual trials seems to me to be no greater than the other systems, or than the ordinary mock trial conducted by the students themselves without any official supervision.

Perhaps, if we in the law schools had more time to devote to the subject of practice, some sort of trial practice court, which should be efficacious, might be devised; but under present circumstances the time spent on actual trials seems to me a case of love's labor lost.

New Officers

On the recommendation of the Nominating Committee, Joseph H. Beale, Jr., of the Harvard Law School, was elected President, and W. W. Cook, of the University of Chicago Law School, was elected Secretary-Treasurer, of the Association for the ensuing year.

The members of the new Executive Committee are Roscoe Pound, of the Harvard Law School, Dudley O. McGovney, of the Tulane University Law School, and Henry M. Bates, of the University of Michigan Law School.

Meeting of Section on Legal Education of the American Bar Association—1913

THE Section on Legal Education of the American Bar Association met at Montreal on September 2, 1913. Mr. Walter George Smith of Philadelphia, Pa., Chairman of the Section, presided. After the address of the Chairman (see page 367 of this magazine) and the reading of papers by Mr. Wilfrid Bovey, of Montreal, and Clarence A. Lightner, of Detroit (see pages 334 and 339 of this magazine), the following discussion took place:

Russell Whitman, of Illinois:

Next to New York, I suppose our examiners in Illinois probably have to pass upon as many applicants for admission to the bar as are passed upon by any one body.

There are a few matters which occur to me, which I shall state briefly, that I should like to mention, because I think this meeting is far more wide-reaching than the numbers that I see here would of themselves indicate. I was deeply impressed by the suggestion in the address of Mr. Lightner as to the moral qualifications of aspirants for admission to the bar.

Now I am going to assume, notwithstanding the difference in latitude, that moral qualifications are as important in Montreal as they are in New York, or Chicago, or Boston, or in any city. I am assuming that clients in Detroit, in Boston, in Chicago, in New York, and in Montreal desire to know first of all whether their representative at the bar is an honest man whom they can fairly trust. That I conceive is one of the first things which this section should devote its attention to, and in that I believe I have the concurrence, not only of Mr. Lightner, but of every lawyer both in Canada and in the United States.

Addressing myself to that question as to the moral qualifications of aspirants for the bar both in Canada and in the United States, I may say this: We have tried as well as we know how in Illinois to see to it that so far as we could accomplish it every aspirant to practice law should be a man of moral character. I am a great believer in concrete

matters. All the platitudes, all the assertions and asseverations, about a lawyer being honest, are quite true; but let us get down to the facts.

How are we going to find out in Canada, or in the United States, whether a young man does measure up to the moral standard that we require? Montreal is a large city, and I hope that my suggestion will not fall on deaf ears. New York is a large city. Chicago is a large city. In the country everybody knows when a young man comes up that he is the son of old John Smith, that lives down in the Baptist neighborhood, and he probably is all right. But in New York, or in Chicago, or in Montreal, or in Toronto, one cannot tell, just from the mention of the name, that the young man is the son of John Smith.

Now, what do we do? We advertise for ten days that Thomas Smith wants to be admitted to the bar. He is required to advertise in a legal publication. But how few of us see legal publications—that is, how very few of us read them. Then Thomas Smith comes into court. He has to get a certificate of moral character from the court. In the old days that was nothing at all. I have been in court several times when the court said: "Charlie," addressing the clerk, "this young man wants a certificate. Give it to him." That was all there was of it. We have tried to do better than that now. The young man has two sponsors, who are supposed to be responsible members of the bar, and they are asked what they know about Thomas Smith and how long they have known him. They may not have known him very long; they may only have just met him out in the corridor, and some fellow has said, "This young man is all right; just vouch for him, will you?" and they say they will.

But those instances are not common nowadays, and they are getting less common. The court asks: "How long have you known this young man? Did you know anything about him before he came here?" I have served on the State Board for a number of years, and the attorney for the grievance committee of the Bar Association, which is the committee that has charge of these matters, looks up the sponsors of the young men. If the sponsors are all right, then the young man is presumed to be all right, and then he comes before the Board, and he is examined touching his qualifications. That is a mere

matter of his knowledge, of course; and when he gets into the bar, if he behaves himself, he stays there. If he does not, and if anybody has any complaint against him, that complaint can be lodged before the Bar Association, and it will be prosecuted. I can give you my word for that, that it will be prosecuted, and if he is not fit to stay in the bar he goes out.

Now, what I am getting at is this: This Section of Legal Education, I think with Mr. Lightner, should concern itself with the proper safeguard to see to it that aspirants for the bar and these members of the bar should be of such moral stamina that they are fitted to practice law, to advise clients, and to stand before the court.

Now, if this Section can constitute itself into a body to devise some plan, some conclusion, whereby humanly speaking—of course, the young man may be privately immoral, and hasn't been caught, and should be in jail—whereby we can carry into effect throughout the United States and throughout the Dominion of Canada some uniform rule, so that when a young man is called to the bar he will be carefully looked over to see whether he is in accordance with the requirements and the reasonable requirements suggested by Mr. Lightner, to see whether he measures up to the moral standard that we as lawyers should require, I think that would be a consummation devoutly to be wished; and I say that that is a task that we should gladly take up.

In Illinois we are doing the best we can in that respect. We look over these young men, and we look over their sponsors. In July we had 370 applicants for admission to the bar before us. We examined over 25,000 answers and graded them as well as we could. From those answers what could be gathered with reference to the moral attainments of a student? Nothing. If this Section will make and enforce its suggestions to the various states—and I assume to the great Dominion of Canada as well—if it will suggest any reasonable rule and requirement with reference to the moral standards, I am sure every lawyer will welcome a practically concrete suggestion to that end.

Charles A. Boston, of New York:

I did not come here with the slightest intimation that I was to be elected Chairman of this Section. I thank you, however, for the honor conferred upon me.

I have given some considerable attention to the general subject treated of in Mr. Lightner's paper, and I feel that it is proper and in line with the suggestion of the last speaker that a few practical suggestions should be made, for it is only by learning what others have done and what others are doing that we can perhaps reach a proper approximation of what we are all seeking.

We should always bear in mind that different communities have different problems. I speak of the problem from the standpoint of a New Yorker. I speak with some hesitation when I see before me two members of the examining board of the state of New York, and there may be a third member here, but my eye has not lighted upon him. They are certainly better qualified from their experience to speak than I am, but I can tell you, not the result, but the *modus operandi* which prevails in New York at the present time, and I have a few perhaps speculative suggestions to make in a way which I think would improve even the present methods.

The state of New York, Mr. Lightner says, is the only state which has a character committee. After a man has passed the Board of Examiners as to intellectual qualifications, he has to pass an examination of a certain sort before a character committee—certainly in the First department, in which I live, and I think in all of them—and that character committee has done a great deal in late years to try and sift the character of applicants coming before it, and men have been rejected because they have not satisfied the committee of their qualification of good moral character. The committee starts out with the idea that the burden rests on the applicant to show that he is a man who ought to be trusted with this fiduciary relation.

In that connection I want to call your attention to a case which I had occasion to mention last year at the meeting in Milwaukee, in which a man was disbarred, not because of any specific charges against him, but because his character and reputation in the community was such that the Court of Appeals did not think that he merited the confidence of the community and he ought not to be continued in office for that reason. (Matter of Percy, 36 New York.)

Now that principle in respect to the actual disbarment of a lawyer because he has not a good reputation is a sufficient standard it seems to me—I mean is one sufficient standard—for determining good moral character. Leaving that rule, which is a judicially established rule, and coming once again to the practice that prevails with us: Our character committee has devised two practical steps of requiring, in the first place—and I think this is now embodied in the new rules for admission to the bar promulgated by our Court of Appeals about a year ago—that a man shall bring to them an affidavit from two citizens, at least one of whom shall be a member of the same bar, and personally known to the members, or one of the members of the character committee, stating in detail the acquaintance of those affiants with the applicant and their knowledge that he is a man of good moral character. A detailed affidavit is required.

Further than that, they advertise the list

of applicants for a certain number of times in the Law Journal. Very few people read that paper, and many offices skip much of it, so that it is rather difficult to learn much about a man's character from that advertisement; but that is as far as the committee goes at present. The Court of Appeals, however, has supplemented that requirement by a rule which requires the Board of Law Examiners to examine upon the code of ethics adopted by the American Bar Association. That shows at least an intellectual acquaintance with some of the problems of ethics.

There have been two or three additional suggestions made, which I will put before you for your reflection, and they may be perhaps considered by the Section in ultimately standardizing the rules for investigating moral character. One of the members of the Committee on Character in the city of New York has suggested to one of the Bar Associations in the city that they appoint a standing committee upon character, the standing committee to be composed of a large number of volunteer members of the Association, two of whom will take as an allotment a certain number of names suggested for admission to the bar and investigate them. That is the method for admission to the City Bar Association, which has an admission committee of 21 members, and no man is admitted to the City Bar Association until he has passed the scrutiny and careful investigation of the members of that committee, who go into the man's entire history.

I have known a great many men to be rejected from admission to the Association on the report of these subcommittees. One member of the Committee on Character on admission to the bar of our state has suggested the adoption of that method as a voluntary method whereby the Bar Association itself will co-operate with the members of the character committee appointed by the judges of the Appellate Division, and will take an allotment and each investigate seriously the prior record of each applicant for admission, so that it may be known. You cannot know in advance whether the man has good moral character or not; but you can tell his reputation, and you can tell by his reputation, perhaps, whether he has a bad moral character, and whether he lacks that degree of moral character which should deprive him of the confidence of the public.

We might take a lesson from a Pinkerton detective, who not long ago told me that he never had any trouble with his domestic servants, because he said that whenever he had to make a change he never engaged a new one, except after he had sent two of his detectives to search out the history of the prospective servants, and he would not take anybody into his household until that had been done.

While it may appear novel to you that a man's entire record should be investigated,

and that the state owes it to the community to investigate an applicant for a lifelong office with the same degree of care that a Pinkerton detective investigates for the purpose of employing domestic servants, yet it seems to me that a man should be required to state his entire history. Then through the co-operation of the Bar Associations that history should be verified, and if there is anything found that is unsavory in it, further investigation should be made, and if the man has not a proper explanation forthcoming he should not be allowed to become a member of the profession.

Finally, if he gets the approval of the state that he is a man who deserves to be accorded admission to practice law, it will be because he himself has produced positive evidence of his good moral character.

I have not touched upon the fact, which is an undoubted fact, that a man possessing good moral character, or possessing an indifferent character, at the time of his application for admission to the bar, may deteriorate after admission. That, however, is a matter in respect of which other machinery will have to be devised.

William Righter Fisher, of Pennsylvania:

I rise to say a word for those who are striving to become lawyers. I highly appreciate the value of the law schools as a means for preparing men for admission to the bar. I also fully recognize the value of a very thorough and complete preliminary education, which, it seems to me, as has been said by one of the previous speakers, really exceeds in importance the later and necessary technical study of the law.

I think that the young men who aspire to positions in the profession of the law are very largely sinned against by the methods now in vogue through which they obtain their training as prospective lawyers. My sympathies go out, and have always gone out, very much more warmly towards them than towards either the community at large or the bar; and I should like to call the attention of the committee which has in charge the matter of attempting to frame standard rules for admission to the bar to one particular feature of their case. My experience has been—and I have had considerable opportunity for observation, and acquiring what may be called an intimate knowledge of the young men in the state of Pennsylvania who are seeking to become lawyers—that almost invariably these students of law are young men of very generous and fine impulses. They start out in life with highly laudable ambitions and purposes; they are seeking not only to advance their own interests, but they are striving, many of them, after something which is a great deal nobler and higher; their minds

are stirred by something which is altruistic; they dream of rendering a service to the public. In other words, they are generous, lovable young men; but we deceive and mislead them.

With all the acknowledged value of the law school as a means of preparation for the bar, it is not in and of itself sufficient. Think for a moment of the position of the average young man, who is a graduate of a law school of the highest efficiency, and who has adequately fitted himself for creditably passing the severest state board examination which can be at present practically set for him. He passes these tests and assumes to start out in the practice of his profession. He is without any attachment whatever so far as professional connections are concerned. I am speaking now of the average young man. He is almost wholly without practical preparation for his work. He has no useful command over the tools of the profession. He has been thrown out upon the world, where, after long preparation, he is to earn his living by professional work, unfitted to render any efficient service which will entitle him to well-earned remuneration. He is without a mentor at his side, without any attachment professionally with actually working lawyers. Is there any reason we should wonder at his falling into devious and unprofessional ways?

I have reflected much upon the subject. It has for many years been painfully thrust before me. What was said here this afternoon by the gentleman from Montreal has very much influenced me. I do not know what the results may be, here in the province of Quebec, from the method of legal education outlined by him; but the young man who has gone through with such a course, made up of office work and law school instruction, certainly ought to have acquired, with a broad legal education, fair practical command of his professional tools, and ought to be inducted into the profession with such attachments professionally as will give him good initial standing for beginning his practical work.

It seems to me that any standard rules for admission to the bar ought to require, among other things, not only a broad, systematic, scientific study of the law, but they ought to require, as well, from all applicants for admission as practicing lawyers, some adequate apprenticeship under the tuition of a practicing lawyer, and some sort of professional attachment whereby the student may be personally safeguarded and drilled in the use of the tools which it is essential he should have at his command before he can render any service to the community for which he is entitled to a compensation in money.

Gentlemen, are we not doing wrong to the young men? Are we not misleading them? We are encouraging them to spend

three, or four, or five, or six, or more years of their lives in acquiring an education which is supposed to fit them for the practice of the law, and yet we bring them into the profession helpless and unattached, and unfit so far as any real practical work is concerned. I think we need to address ourselves to this aspect of the subject, rather than to that of detective espionage and suspicion.

H. A. Bronson, of North Dakota:

I have been interested exceedingly in the remarks of the gentleman from Pennsylvania. I am a member of the Board of Bar Examiners of North Dakota. I have also taught law in a law school as an avocation, being also a practicing lawyer, for practically ten years. I have listened this afternoon with considerable interest to the address delivered by Mr. Lightner. I am impressed that there never was a time when the ideals of the American lawyer were greater than they are to-day. I am further impressed, from visits to this American Bar Association for the past five years, with the fact that this Section and the bar as a whole are attempting to do all that they can to further an approximation to those high ideals.

As a member of the Board of Bar Examiners of North Dakota it has been my experience that of the candidates seeking admission to the bar the deficiencies are revealed largely in a lack of fundamental training, and in a lack of being equipped for entering upon the actual practice of the law, and also in a lack of an efficient method for determining the moral qualifications of the candidates. In North Dakota we have an opportunity to examine candidates from all of the Eastern universities, and we have noticed that the absence of practice court work, which we discussed here last year, is something that needs attention.

I think it is a demonstrated fact in the state of North Dakota that the requirement of a fundamental training, the requirement of a long term of legal education, has produced distinctly a better type of lawyers; and I deny the indictment, if it be an indictment, that Mr. Lightner makes, that the lawyers of to-day are not respected, either for moral delinquencies or otherwise, and I say that in North Dakota there never was a time when the lawyers stood in higher repute in the eyes of the people. There was a time there when men could be admitted to practice law merely on motion and without any particular legal qualifications. But we have progressed gradually, requiring a certain term of study, and then requiring two years in a law school, or two years spent in a law office, and now the requirement is three years of study in a law school, or its equivalent in a law office. The fundamental learning has also been gradually

changed, so that now it is necessary to have at least a high school education.

I want to say that my experience in North Dakota has demonstrated beyond peradventure that the requirements of a better fundamental knowledge, of a longer term of service, has unquestionably brought us a number of men of greater legal acumen, and also I maintain that a high standard fundamentally in general knowledge and a high standard in legal education tends to bring before the Board candidates who are of greater moral stamina, because certainly we ought to be willing to admit, and the history of experience certainly tends to demonstrate to us, that ordinarily a man, who is well qualified in the fundamentals and who has devoted a good length of time to legal study, is perforce a man of greater moral stamina than one who has never attained or done the like, other considerations being equal.

To me the great inquiry is: How may a Board of Bar Examiners inquire with reference to the moral fitness of candidates? How may methods be adopted, so that the young candidate seeking admission to the bar may be qualified to enter immediately upon the practice of law? It seems to me, therefore, that the remarks of the gentleman from Pennsylvania are in line at this time; that some method of practice courts, pursued perhaps at institutions for the study of law, would be a matter for proper consideration.

L. J. Nash, of Wisconsin:

I was admitted to the practice of law after five years' study. For seven years I was a member of the State Board of Law Examiners in Wisconsin. The subject of the moral qualifications of men applying for admission to the bar has been a subject very much in my mind, and in the seven years that I examined young men I found that not a fraction of one per cent. could be disbarred or refused admission on account of their moral character. I found that the young men were all right until temptation hurt them, and the temptation does not come until they are in harness.

If you put detectives on the track of these young men, as was intimated in the remarks of one of the gentlemen here, you will harm the young man all through his life oftener than you will help the profession. Suppose it be true that a young man has committed some little offense. He may nevertheless have a better moral fiber, that will enable him afterwards to withstand temptation. With the young man who has never had any temptation, his record is of course all right. Let the young man have a chance.

As to these rules for testing the moral fiber of a man that has been talked about, I suggest this other remedy: Make your methods efficient for removing men from the bar. I

think that will do the work far better than any detective or any character committee. Why, in the great stretch of sparsely settled country in the West, those committees could do hardly anything at all. You might make it work in New York or in Chicago to some extent; but it would be immensely expensive and of very little use in the West, I think.

Charles H. Hartshorne, of New Jersey:

It occurs to me that some classification of candidates for admission to the bar should be borne in mind in considering this question of the investigation of moral character. I have in mind a case as an illustration of one class. A young man who applied for admission to the bar, it was discovered, had forged the certificate of his preliminary education required under the rules of the court, and upon inquiry it was ascertained that he afterwards made other false representations to officials in his efforts to be admitted to the bar examinations. Now, I suppose that no one would advocate the admission to the bar of a young man who had thus acted.

Doubtless there is a class of candidates, found chiefly in the larger cities, whose character at the time they apply for admission is such as to make it probable that they would be unworthy members of the bar. Now, the problem is how to ascertain that class of candidates. I confess that I do not know what specific method would be effective for that purpose; but I am inclined to think that the method pursued in New York City is as good as any other, if the assistance of a sufficient number of members of the bar can be obtained to carry it into effect. In order to investigate the moral character of candidates in the way suggested by Mr. Boston, where there are from 50 to 100 or more applicants at a time, no single commission or board could effectively investigate their character. It would take a larger number of men to do that than is ordinarily found in a board of bar examiners.

There remains another class of applicants, whose character, when inquired into, will be found unquestioned; but, being naturally weak in moral stamina, they fall easily into temptation. Most of the cases of disbarment are of this kind. It is quite impossible, as far as I know, to invent any method of guarding the bar against misconduct on the part of men of that kind. Some effective way to deal with that class is very much to be desired.

W. O. Hart, of Louisiana:

The discussion this afternoon has brought to my mind a celebrated law examination just after the war between the states, and it seems to me that, from the diversity of

opinion expressed here, we have not advanced very far beyond that time. Mr. Reed, afterwards Speaker of the House, and Judge Wallace, afterwards of the Federal Court, were up for examination for admission to the bar. Chancellor Wadsworth was conducting the examination. This was in 1865. He said to Mr. Wallace: "Is the legal tender act constitutional?" Without a moment's hesitation the candidate said, "No, sir." Then the Chancellor turned to Mr. Reed and said, "What do you say?" "Yes, sir," replied Reed. The Chancellor turned to his associates and remarked, "Gentlemen, when young law students can answer such constitutional questions as this offhand, further examination is unnecessary," and they were both admitted.

Richard W. Irwin, of Massachusetts

made a few remarks in favor of a free bar, in so far as a searching investigation into the character of applicants for admission is concerned. He advocated impeachment or suspension of lawyers for misconduct.

Z. T. Rudolph, of Alabama:

In our state our efforts are directed to prevent the necessity for future disbarment by trying to raise particularly the moral standard, and though we have had to disbar several (but I may say that with two exceptions those who have been disbarred have come from other states, one from Massachusetts), we are trying to avoid the continuous happening of such unpleasant duties, or imposing such duties on the Bar Associations of sister states.

The question here, as I take it, is this: We cannot make straight the morally crooked, who have already been admitted to the bar; but I think the proper course is to require moral integrity as a prerequisite to become a lawyer.

Now, I have listened with a great deal of interest to the gentlemen who have spoken of what they do in New York. Let us start right, and if a proper standard is required to begin with, the difficult and unpleasant duty of purging our profession and protecting the public from the dishonest or shyster lawyer will become seldom, and, it is to be hoped, unnecessary. I think that the intimate knowledge of the character of their associates that the benchers learned at the Inns of Court is what established in those admitted the high character and standing that the English lawyers occupy. I have read that, when one of the great justices of England was asked how he accounted for the judges whom he had named for appointment always being good ones, who reflected honor on him, his reply was: "I have always made it a rule only to select those men whom I considered as gentlemen first, and then, if they are honest, there will be no difficulty about cultivat-

ing sufficiently capable intellects." No gentleman can be otherwise than honest and of sufficient intelligence to make a good judge.

In Alabama I have been on the grievance committee for several years, whose unpleasant duty is to institute proceedings to expel dishonest lawyers. We have expelled several, and have our hands full, and still have complaints pending against several. We have had lawyers investigated, and I am glad to say our board has exonerated more than they have found guilty. Some 26 out of 32 applicants were turned down by our Examining Board last year.

The distinguished judge from Massachusetts threatens that the people will take a hand if we should, by requirements and investigations as to morals, restrict admission to the bar and thereby form a close corporation of lawyers. Now, gentlemen, I do not believe we should hesitate, nor fear what "the people" would do, if we do our duty in protecting the people from dishonest lawyers; for it is the general public who need protection and suffer from this dishonesty, and not lawyers individually, except so far as to lower the profession in the public's estimation.

I believe in restricting membership of the bar—restricted by moral as well as intellectual requirements, and that the bars should not be thrown down, and the crowds admitted to experiment and practice on the public, who still generally believe that a lawyer's license to practice law is a warrant by constituted authority of the state that he is capable and presumptively honest and faithful, and therefore can be trusted. Laxity or carelessness of the moral qualification is, in my opinion, why the bar does not now occupy the high and honorable position in the public's estimation that it should.

The opinions expressed by the gentlemen as to the bar having the same respect that it had ten years ago are so conflicting that I assume that their statements are made from their local standpoint, and I am glad that there are localities in which the bar is esteemed with greater respect than it was ten or fifteen years ago; but in my judgment, locally, that is not a fact, and the principal cause—failure of a high moral qualification—is the difficulty we are trying to remedy, and I believe will succeed. The public's estimation of the lawyer will certainly not be raised if we are going to consider intellect either solely or the predominant requirement for admission to the bar, and ignore as an equally essential requirement moral integrity in every applicant who has sufficient intellect to pass the Examining Board. I believe that no complaint filed with our committee is attributable so much to ignorance or lack of ability as to lack of strict moral integrity and faithfulness.

The intellectual advantage and ability re-

quired of lawyers now is higher, I believe, than ever before; but I fear that this ability requirement and the public's demand for successful results have been at the sacrifice of moral ideals and principles, and that each of us can call to mind cases in which we have been too much of the selfish opportunist, regardless of law, justice, and integrity, in following out our oaths as lawyers in the spirit particularly, though justified by the words.

I hope this Section will indorse the resolution requiring morals as necessary as intellect in candidates for admission to the bar.

William Righter Fisher, of Pennsylvania :

I hope my remarks were not so vague and inapt as to mislead any member of this Section. I am an advocate, and I think I am so recognized in my own state, of high standards for admission to the bar. Personally I regard the moral character of the men as of much greater importance than their intellectual attainments, although I think they are generally indexes of each other. I hope

no one will attribute to me any inclination towards the lowering of the standards. On the contrary, I would raise them. What I said was intended as a plea for the young men, and a possible aid to them in acquiring such a preparation for their professional work as may lift them above some of the temptations before which many of them fall, whose characters have never been adequately tested and formed until after their admission to the bar.

New Officers

On recommendation of the Nominating Committee, Charles A. Boston, of New York, was elected Chairman, and Charles M. Hepburn was elected Secretary, of the Section for the ensuing year.

Notes and Personals

The American Judicature Society has been created in the hope and expectation that it will be the logical response of the legal profession of the United States to the present insistent need for studying and directing the movement looking to scientific efficiency in the administration of justice. Popular interest in the subject has greatly outstripped popular experience and knowledge. The question is foremost among national problems. The expectation that "something will be done" prevails very generally.

What there is of value in aroused public opinion we already have. But of expert direction, of counsel based upon comparative and historical research, there is obvious insufficiency as well as lack of authority. In order, then, that the inevitable development in the field of American adjective law shall be in the direction of true ideals, it appears essential that those members of the bar who are inspired by a sense of responsibility to the people and are best qualified to leadership should undertake an affirmative and comprehensive programme of reform.

It is the primary purpose of the American Judicature Society to co-ordinate the efforts of such lawyers and other public-spirited individuals, in order that the work may be

orderly as well as thorough, and that it may be accomplished with saving of time and energy.

The Society sets no limits upon its scope of work save only those of the entire adjective law. The division between substantive and adjective law is a clean cleavage. Dissatisfaction in the former field is permanent and wholesome. But the adjective law, the field of judicature and procedure, is capable of scientific evolution approaching perfection.

The Society does not compete with any existing organization, but intends to assist and employ all agencies which function in this field. It proposes to offer to the several states model judiciary acts embodying true legal and philosophic principles, calculated upon adoption to recreate the administration of justice upon lines of efficiency.

As a basis for the drafting of such acts the Society proposes to engage in exhaustive research and comparative study, to employ directly and indirectly the highest constructive talent of the American bar, to explore the judicial systems of other nations, and to invite discussion, proposals, and criticism on the part of representative lawyers in all of the states. To this end a central body of public-spirited lawyers will be made up to assist the drafting bureau, and annual meet-

ings will be held for discussion of projected measures.

In pursuance of the purposes above set forth the Society has undertaken to engage the ablest lawyer combining practical and academic experience who is now available. The search for a man to serve exclusively as Director of Drafting has resulted in the selection of William E. Higgins of Lawrence, Kansas. Mr. Higgins has practiced in two states, Missouri and Kansas, and is in charge of the pleading and practice courses of the Law School of the University of Kansas. He has the prestige of having served as a member of the committee which gave Kansas its procedural reform in 1909. He has also served as chairman of the committee of the Kansas State Bar Association on Criminal Procedure. This committee has reported a number of measures which have been adopted by the Association and which will be presented to the Kansas legislature for action. Mr. Higgins has been lent to this work for two years by the University of Kansas and has taken up his residence in Chicago to devote all his time to the Society as Director of Drafting.

At an early stage of the work Mr. Higgins will go to England to devote several months to a critical study of the results attained through the Judicature Acts of 1873 and 1875 and the reformed procedure. He will also study the administration of justice under the English system as transplanted in the Canadian provinces.

The members of the board of directors are Harry Olson, Chief Justice of the Municipal Court of Chicago; John H. Wigmore, dean of Northwestern University School of Law; James Parker Hall, dean of the Law School of the University of Chicago; Nathan W. MacChesney, second president of the American Institute of Criminal Law and Criminology; Albert M. Kales, practicing attorney and lecturer in Northwestern University School of Law; Frederick Bruce Johnstone, of the Chicago bar; John B. Winslow, Chief Justice of the Wisconsin Supreme Court; Frederick W. Lehmann, of St. Louis, former president of the American Bar Association; Roscoe Pound, of the Harvard University School of Law; Woodbridge N. Ferris, Governor of Michigan; and Herbert Harley, who has recently devoted a year to a survey of the problems involved in the administration of justice in American courts.

The drafting bureau and headquarters of the Society are located at Suite 340, 29 South La Salle Street, in the city of Chicago.



During the week in which the meetings of the American Bar Association and the Association of American Law Schools were held in Montreal, there was held a convention of the Order of the Coif. The order is an

honorary society, which has chapters in many of the leading law schools in the United States. Members are elected only during the last half of their third or senior year in the law school. From an eligible list containing the names of the ten per cent. of the senior class who have the highest record of scholarship in the school concerned, each chapter annually elects its members. As these members are graduated shortly after their election and initiation, the active management of each chapter is largely in the hands of the faculty of each school.

The sole object of the Order of the Coif is to advance the standard of scholarship in American law schools. Its name is, of course, taken from the (now extinct) English Order of the Coif, whose history is so fully set forth by Mr. Sargeant Pulling in his books on the Order. Chapters of the American order exist in the following schools: University of Chicago Law School; University of Illinois Law School; University of Iowa Law School; University of Michigan Law School; University of Missouri Law School; Northwestern University Law School; University of Nebraska Law School; University of Pennsylvania Law School; Stanford University Law School; University of Virginia Law School; Western Reserve University Law School; University of Wisconsin Law School. Applications from other leading law schools are being considered.

The convention at Montreal elected the following officers for the next three years: President, Henry M. Bates, of Michigan; Vice President, Wm. U. Moore, of Wisconsin; Secretary-Treasurer, Walter W. Cook, of Chicago. Members of Executive Committee (in addition to the officers): Wm. E. Mikell, of Pennsylvania; M. O. Hudson, of Missouri; Nathan W. MacChesney (retiring President).



The Fifth Annual Meeting of the American Institute of Criminal Law and Criminology was held in Montreal at the time of the meeting of the American Bar Association. The annual address was given by Moorfield Storey on "Some Practical Suggestions as to the Reform of Criminal Procedure." Reports of committees were received, among others that of the Committee on Insanity and Criminal Responsibility, by Edwin R. Keedy, of Northwestern University; that of the Committee on Indeterminate Sentence and Release on Parole, by Edwin M. Abbott, of Pennsylvania; that of the Committee on Organization of Courts, by Roscoe Pound, of Harvard; and a preliminary report by the Committee on a Draft of a Code of Criminal Procedure, by William E. Mikell, of Pennsylvania. It was voted that an American Society of Military Law be created as a section of the Institute. Justice Quincy A. Myers, of the Supreme Court of Indiana, was elected President for

the ensuing year, and Henry W. Ballantine, of the Wisconsin Law School, Secretary. Interested persons are invited to apply for membership, and it is very much to be desired that teachers of law should take an interest in the work of the Institute.



Abram Penn Staples, fifty-five years old, for years one of the most prominent attorneys in Roanoke, Virginia, and since 1904 professor of law at Washington and Lee University, died September 30th at Roanoke as a result of complications of the heart, from which he had suffered for several months.

Abram Penn Staples was born at Stuart, Patrick county, Virginia, August 14, 1858, and was a son of Samuel Granville and Caroline Harris DeJarnette Staples. He was a student at Virginia Agricultural and Mechanical College, 1874-75, and was graduated from Richmond College with the degree of LL. B. in 1879. He practiced law in Henry county from 1881 to 1890, when he came to Roanoke and formed a partnership with Robert E. Scott, under the firm name of Scott & Staples, in the early days of Roanoke. Mr. Staples enjoyed a large practice, and was considered a man of exceptionally brilliant legal attainments.

In 1904 he abandoned active practice and accepted the chair of law at Washington and Lee University, which he has occupied ever since.



The General Assembly of Maryland in 1812 authorized the College of Medicine of Maryland, founded in 1807, "to constitute, appoint and annex to itself three other colleges or faculties, viz., the Faculty of Divinity, the Faculty of Law, and the Faculty of Arts and Sciences," and declared that "the four colleges or faculties, thus united, should be constituted a university by the name and under the title of the University of Maryland." In pursuance of this authority the University was organized in 1813, being one of the oldest chartered universities in America, coming eighth according to official figures.

While the first Faculty of Law was chosen in 1813, and David Hoffman was elected Professor of Law, no regular school of instruction was opened until 1823. This was suspended in 1836 for lack of proper pecuniary support and on account of the small number of students who were able or willing to spend the time necessary. when admission to the bar was of little difficulty, to take advantage of the course of Professor Hoffman, whose ideals of legal education were far in advance of his times. In 1869 the Law School was reorganized, and in 1870 regular instruction therein was again begun. From time to time

the course has been made more comprehensive and the Board of Instructors increased in number.



The lectures in the Law School of the University of Maryland, where all of the professors were actively engaged either upon the bench or at the bar, have been mainly given in the afternoons. In order to afford deserving young men, who could not attend lectures except at night, the advantage of systematic instruction in preparing for the bar, two other law schools were organized under charters granted by the state of Maryland, viz., the Baltimore Law School and the Baltimore University School of Law. These schools, both of which were doing good work and steadily advancing their standards, were consolidated under the name of the Baltimore Law School on the 1st day of February, 1911. With a view of still further elevating the standard of legal education in this state, and at the same time affording to every young man, who has the requisite preliminary training, fitting him to successfully prosecute legal studies, an opportunity to properly qualify himself for the bar, arrangements have been made by which the Baltimore Law School has become merged into the Law School of the University of Maryland, and the latter will, beginning with the session of 1913-14, conduct a day school and a night school; both having the same curriculum, faculty, and requirements for admission and graduation, and these will aim to accord with those laid down by the Association of American Law Schools.

It was with deep regret that the faculty of the University of Maryland accepted the resignations of Mr. Edgar Allan Poe and of Hon. Charles J. Bonaparte. Mr. Poe has lectured on the law of Sales, Suretyship, and Negotiable Instruments for the last thirteen years. Mr. Bonaparte has lectured on the law of Contracts for the last three years.

The present Board of Instruction includes Alfred Bagby, Jr., Randolph Barton, Jr., Carroll T. Bond, J. Wallace Bryan, Howard Bryant, W. Calvin Chesnut, Ward Baldwin Coe, James U. Dennis, Edwin T. Dickerson, Joseph C. France, Eli Frank, James P. Gorter, Henry D. Harlan, Charles McH. Howard, Arthur L. Jackson, Stuart S. Janney, Sylvan H. Lauchheimer, Alfred S. Niles, Eugene O'Dunne, Wm. Lee Rawls, Albert C. Ritchie, John C. Rose, Henry Stockbridge, Herbert T. Tiffany, Clarence A. Tucker, and Joseph N. Ulman, all members of the Baltimore bar.



The College of Law, University of Southern California, at Los Angeles, opened the fall semester on September 10th with the largest enrollment in its history. A student body of 600 is expected for the year. There

have been no new additions to the faculty, and only a few changes in the curriculum. Judge Gavin W. Craig has resumed his night class in Elementary Law, which has been under the charge of Vincent Morgan for the past two years. Dean Porter has given the subject of Wills, which he has taught for the past five years, to Victor R. McClucas. Mr. McClucas came to Los Angeles from Michigan University, where he had been an instructor in the Law Department.

The Night School has been entirely rearranged this year. Classes will be conducted on four nights only during the week, and in order to complete the course in four years students will have to attend three Summer Sessions in addition to the four years Night School. It is expected that better work will be accomplished by thus stretching out the Night Course. Other law schools have been struggling with the problem of night schools and how to maintain a grade of work equal to grade of day work. This school hopes this plan will prove a satisfactory solution. The course now calls for four years of ten and one-half months each. This ought to be time sufficient to cover the three years of day work.

The practice court system is one of the leading features of the College of Law of the University of Southern California. Its purpose is to acquaint the student with the actual practice before the different courts, from justice's court to the Supreme Court. The practice court is a regular part of the curriculum, and three years of practice is required of all students. Experienced attorneys act as judges in the trials, and the Supreme Court is composed of members of our superior court bench.

An interesting note, which has attracted much attention during the past year, is the Phi Delta Delta Legal Sorority, the Alpha Chapter of which was organized at the College of Law, University of Southern California, in 1911. This Sorority has the honor of being the first organized among women law students in the United States. Last spring two other chapters were installed in Eastern law schools; Beta Chapter at the Washington College of Law, Washington, D. C., and Gamma Chapter at Chicago Kent College of Law. Other applications have come in, which assures the growth of the Sorority in the future. There were 41 women enrolled at this Law School last year.



In June, 1913, the Law School of Western Reserve University graduated the last class to enter before the entrance requirements were changed to a graduate basis. All three of the classes now in the Law School are therefore composed entirely of college men. The class which entered this fall is not much smaller than were classes admitted directly from high school. Although not a single

special student was admitted, the change from a school admitting directly from high school to a graduate law school has been effected with a loss of but twenty per cent. in total enrollment. This change in requirements has resulted in a decrease in attendance far less than had been expected and every member of the Faculty of the Law School is satisfied that the change was wise. Experience proves to the teachers in this state that the case system can be taught satisfactorily only when men are mature and well-trained.

An addition which will double the size of the Law Building is to be ready for occupancy in six weeks. This building will contain a large library, complete in every detail, with a capacity of thirty thousand volumes. There will also be an assembly room sufficiently large to seat the entire student body.

The will of Mr. Alfred A. Pope, a trustee of Western Reserve University, who died a few weeks ago, contained a devise of property worth \$100,000 to the Law School. This property contains the city salesroom and garage of the Winton Motor Car Company, and is situated in the heart of the business section of Cleveland. Mr. Pope always took a deep interest in the welfare of the Law School.

Only one change has been made this fall in the Law School Faculty. Mr. Clinton Dewitt, A. B., LL. B., will teach the courses in Suretyship and Mortgages. These courses were formerly taught by Cyrus Locher, A. B., LL. B., whose election as Prosecuting Attorney prevents his continuing as Instructor in the Law School.



John H. Wigmore, Dean of the Northwestern University Law School, returned to Chicago in September from a three months' tour of France and Spain. Though not charged with any specific researches, he took the opportunity, which only a personal visit affords, of securing some important materials for the Elbert H. Gary Library of Law. Most of these were the scarce volumes of the ancient *fueros*, or medieval regional laws of Spain. They included also a hand-colored photograph, specially taken, of the title page of the beautiful illuminated manuscript of the *Breviary of Alaric*, or Visigothic Roman Code, in the National Library at Madrid. This is one of the oldest memorials of Germanic legislation in Europe, dating from the sixth century. The collection embraces also an early printed edition (sixteenth century) of the *Fuero Juzgo*, the principal medieval Spanish Code, once the law in Louisiana and Texas.

Mr. Wigmore also took the opportunity to confer with several leading Spanish jurists on the progress of legal science there—Ra-

fael Altamira, the legal historian, Bernaldo de Quiros, the criminologist, Giner, the legal philosopher, and others.



The course in Practical Problems in Contemporary Legislation will this year be given in Northwestern University Law School by Dean Wigmore, with the co-operation of other members of the Faculty. This course forms the class into legislative committees, and each member takes his turn in reporting for discussion some current problem.

The courses on Illinois Law, which are intended to supply the materials for the study of the local system and thus to enable the student to bridge the gap between his general training and the local decisions and statutes, will this year be expanded to cover the following subjects: Procedure and Practice, Corporations, Common Law Pleading, Property, Trusts, Torts, Municipal Court Practice, Crimes, Criminal Procedure, Evidence, Contracts, Wills, Probate Practice, Carriers, Municipal Corporations, Equity, Sales, Property, Agency, Marriage and Divorce, and Landlord and Tenant.



Two new instructors have been added to the faculty of the University of Texas Law School, Dr. Ralph Culver Bennett and Wilbur Munday Cleaves. Dr. Bennett received his B. S. degree from Illinois Wesleyan University in 1902, the bachelor of arts degree from Yale University in 1906, the bachelor of law degree from Yale in 1909, the degree of master of arts from Yale in 1910, and the degree of doctor of civil law from Yale in 1912. Last year Dr. Bennett was at Johns Hopkins University. Mr. Cleaves received the degree of bachelor of laws from the University of Texas in 1909 and has completed most of the work of the degree of bachelor of arts. He has been secretary of the law department since his graduation and will continue in this position also.

Dean John C. Townes of the Law School is carrying out plans which he has had formulated for quite a while, thus giving the department an opportunity for greater endeavor. Particularly will the student in the Law School receive a better training in adjective law than has ever been possible before. The time devoted to pleading and practice has been increased 66% per cent. Pleading heretofore has been completed in two terms, while under the new arrangement a whole year will be devoted to its study. Robert E. Cofer will be in charge of this work, and will conduct in addition the practice court work during the senior law year. A new quiz master has been added to care for this work, and his time will be devoted to acting

as clerk of the court and correcting and assisting the students in the preparation of pleadings in the moot trials.

Mr. Cleaves will offer a course in "Law Books and How to Use Them" to the junior class, with the idea of gaining proficiency in the use of the library and aids in developing a case. In the winter term he will give a course in Damages to the middle class, and in the spring term a course in Domestic Relations.



The University of Virginia Law School opened the session with a marked increase in enrollment. At the present date the registration is about 40 in advance of last year, and the total matriculation will probably reach 285. At present 31 states are represented in the enrollment.

The chief change in the curriculum was the inauguration of an obligatory course in Forensic Debate, and an elective course in Legal Argumentation, as substitutes for the courses formerly offered in Public Speaking; the principal difference being that the subject-matter of the present work is legal in character.

A new departure in the growth of the Law School was marked by the recent establishment of the "Virginia Law Review," a legal journal to be managed and edited by the students of the department. The magazine will appear in eight numbers throughout the year, from October to May. The first number, which will go to press early in October, will contain articles by Mr. Hannis Taylor, former Minister to Spain, Professor Raleigh C. Minor, of the Law Faculty, and Judge O. W. Catchings, of Mississippi, as well as the recent decisions, notes on recent cases, book reviews, etc., customary in such publications.

The new journal has received the cordial assistance and advice of the editors of the older magazines of like character, and its editorial board has profited much from the personal co-operation of the editors-in-chief of the Harvard Law Review and the Columbia Law Review, both of whom were recent visitors to the University of Virginia.



The ninety-second year of the George Washington University and the forty-eighth year of its Department of Law were opened on Wednesday, September 24th. At the opening exercises of the Law School, held in the main hall of the school, there was a large attendance of students. Dean Gregory presided and gave an opening address. Professors Henry Craig Jones and Walter C. Clephane spoke for the Faculty, and Messrs. James Hollsworth Gordon and Aldis B. Browne for the Board of Trustees. Mr. Bickel spoke briefly in behalf of the students'

debating societies. It was announced that the Faculty had by resolution recommended Merrell Edward Clark, of New York, for the Ordronaux Prize Scholarship, he having during the first and second years of the course attained the highest average grade in scholarship, and of the Phi Delta Phi Prize to John Monteith McFall, of South Carolina, he having attained the best grades in the first year class.

The registration of the school is so far showing a considerable increase over that of preceding years.

Dean Charles Noble Gregory had a cottage for the summer at Diamond Point, Lake George, where, among others, he entertained his English friend, George Grahame Hamilton, of the Inner Temple, London, who was spending a holiday in this country.



The Iowa State University Law School has added a new member to its faculty this fall in the person of Oscar R. Ewing, who has been appointed to the position of Instructor. All members of last year's teaching staff will remain this year, Mr. Ewing's appointment resulting from an increase in the number of the faculty. Mr. Ewing's home is in Greensburg, Ind., and he is a graduate of the University of Indiana (1910) and Harvard Law School (1913). While at Harvard he was one of the editors of the *Harvard Law Review*.

The course in International Law, omitted last year, will be given this year, and the course in Property IV, also omitted last year, will be given this year under the name of Future Interests, being expanded to a full year course in the senior year. Conflict of Laws will also be expanded from a semester to a full year course. Somewhat greater freedom of election will be allowed, and several courses formerly scheduled as senior courses will be open to both juniors and seniors. Persons, Insurance, Quasi Contracts, and Partnership will be given hereafter in alternate years; Insurance and Quasi Contracts being given this year, and the other two next year.



Following is a list of special auxiliary lectures which will be given in the University of Pennsylvania Law School this season: Legal Bibliography, by Mr. Amram; Law of Mines and Mining, Mr. Adams; Law of Interstate Commerce, Mr. Drinker; Conveyancing, Mr. Stern; Trial of Criminal Causes, Mr. Ralston; History of Legal Literature, Mr. Carson; Life and Fire Insurance, Mr. Pepper; Road Law, Mr. Foulke; Settlement of Estates, Mr. Hanna; Legal History, Mr. Loyd; Workmen's Compensation Laws, Mr.

Bohlen. These lectures are offered to students in addition to the regular courses and are very popular.

The regular course on Foreign Commercial Law will be given this year by Mr. Layton B. Register, who was awarded the Gowen Fellowship, and who has been studying abroad and in South America for the past year.

The following resignations occurred in the Law School: Messrs. Robert T. McCracken and Garrett A. Brownback. Professor George S. Patterson is away on a year's leave of absence. Mr. H. W. Bikle will conduct Professor Patterson's lectures on Constitutional Law during 1913-14.



The New Jersey Law School, Newark, N. J., opened for its sixth session on September 18th. The freshman class is the largest in the history of the school. Six women have registered. Owing to the change made in the curriculum in September, 1912, the course having been lengthened at that time from two to three years, there is no senior class in the school this year.

Torts will be given the second half year, four hours per week, and a new casebook is announced for that class, Currier and Bate on Torts. Chief Justice Gummere, of the Supreme Court of New Jersey, in the course of an address not long ago, made the statement that the New Jersey lawyer would find in his own State Reports an able discussion of nearly every point in the main branches of the law of to-day. This seems to be particularly true in the case of the law of Torts, and the new casebook will be composed of about 95 per cent. of New Jersey cases.

The State Board of Bar Examiners of New Jersey have recently made a much-needed change in the preliminary educational requirements of law students. These requirements will go into effect January 1, 1914, and after that date a full high school course will be necessary before beginning legal studies in New Jersey.

The entrance requirements of the Law School are the same as those of the State Board.

There have been several changes in the Faculty since last year. Mr. Burnett, who has been with the school since its organization, has accepted an associate professorship in New York University Law School, and will begin his duties at that institution the present year. His course in Real Property at the New Jersey Law School will be given by George D. Zahm, formerly an assistant professor of law at the Yale Law School. Mr. Wilbur La Roe, Jr., a graduate of the New Jersey Law School, class of 1909, and also a graduate of Princeton, will give the course in Domestic Relations.

The forty-first annual session of the School of Law of the University of Alabama began September 10th, with a large increase in the registration in the entering class over the total registration of the entering class of last year.

The curriculum and work of the School of Law have been greatly strengthened for the present year. The subjects of Criminal Procedure, Constitutional Law, and Wills have been added to the course of study, and the time devoted to Contracts, Torts, Real Property, and Evidence has been materially increased. A course in practice, running throughout the senior year, has also been added, and the work in it will be emphasized.

The resignation of Hon. W. B. Oliver as Dean of the School of Law was tendered in April, in order that he might make the race for member of Congress from the Sixth Alabama district. The university authorities accepted his resignation with regret, for during Mr. Oliver's administration the School of Law was placed on a higher plane, and he proved himself to be a capable and conscientious administrative officer and instructor.

The severance of Mr. Oliver's connection with the Law School has necessitated several changes in the faculty. Albert J. Farrah, who had been Assistant Dean during the first part of last year, was made Dean of the Law School. Dr. Edmund C. Dickinson, who was a member of the law faculty of the University of Florida for two years, has been added to the faculty, as has Hon. A. S. Van De Graaff, who is one of the leading members of the bar of Alabama. Thos. B. Ward, who has been a valued member of the faculty for several years, retains his connection with the school.

The School of Law requires fourteen Carnegie units for admission of candidates for a degree, and maintains a course of study covering a period of two years. It is expected that the curriculum will be extended to three years in the near future.



St. Louis University Institute of Law has opened for the season with an enrollment of 220 students. No new changes have been made in the curriculum, except that a new course of Procedure has been introduced for the postgraduate.

Alexander Robbins, A. M., LL. B., author of "American Advocacy" and managing editor of the Central Law Journal, has been added to the regular staff of professors. He will lecture on Contracts, Domestic Relations, Insurance, Conflict of Laws, and Advocacy. The Institute is to be congratulated on securing the services of Mr. Robbins, who is an excellent law lecturer and a deep legal philosopher.

Judge William T. Jones, A. B., LL. B., has

been constrained to resign his position as lecturer on Code Pleading, on account of the press of professional duties. Judge Jones was elected to the circuit bench of St. Louis at the last municipal election. He brings to the bench a wide experience and deep learning in the law, and his lectures on Code Pleading delivered at the University will always be remembered as very interesting and learned discourses. John B. Reno, A. M., LL. B., registrar of the Law Department, will take his place as lecturer on Code Pleading.

Robert J. Fox, A. M., LL. B., a well-known lawyer of St. Louis, will lecture on Torts. He takes the place of Lawrence McDaniel, Assistant Circuit Attorney of St. Louis. Mr. McDaniel will give a series of lectures on Personal Property this year.

William T. Nardin, A. B., LL. B., will teach the subject of Evidence. The former lecturer on Evidence was Frank B. Coleman, LL. B., of St. Louis.

Albert Arnstein, A. B., LL. B., a graduate of Harvard and engaged in the practice of law in St. Louis, succeeds his father as lecturer on Corporations.

Alphonse G. Eberle, A. M., LL. B., graduate of St. Louis University and of the Law School, will teach the subject of Partnership.



R. A. Daly, of Chicago, who is well known to law school teachers and law students throughout the country, will give his course of special instruction on Legal Bibliography and the Use of Law Books this season in the following places: Northwestern University, John Marshall Law School, University of Illinois, Creighton University, University of Nebraska, University of Kansas, Kansas City Law School, University of Oklahoma, University of Texas, University of Missouri, Washington University, St. Louis Institute of Law, Benton Law School, Cleveland Law School, Western Reserve University, University of Pittsburgh, University of West Virginia, Washington and Lee University, University of Virginia, National University, Georgetown University, University of Maryland, Cornell University, Columbia University, Fordham Law School, New York Law School, Yale University, Boston University, Buffalo Law School, Detroit Law School, University of Valparaiso, University of Indiana, Marquette University, University of Wisconsin, and St. Paul Law School.



The Law Library of the University of Notre Dame was notably enlarged and improved during the summer under the supervision and direction of the Rev. Dr. Fench, who is in charge of the different libraries of the University.

The senior law class of the University of Notre Dame is the largest this year in the history of the institution. It exceeds forty in number. A two years' collegiate course is contemplated as a requirement for matriculation.

The regular teaching faculty of the Law Department of the University of Notre Dame for the current academic year comprises Dean Hoynes and Judges Howard and Farabaugh. They will, however, be assisted from time to time by several lecturers and instructors, among whom are Judge Arthur L. Hubbard, William A. McInerney, and Vitus Jones, of South Bend. Mr. Henry A. Stels is expected also to render service in this line. Much to the regret of student and faculty, Hon. F. H. Wurzer, who ably assisted in this work last year and previously, cannot continue his lectures, as he has removed to Detroit and become a member of one of the leading law firms of that city.



The Summer Session of the Department of Law of the University of Michigan closed with an enrollment of 192 students, a healthy growth over last year. In addition to courses by the regular members of the faculty, Dean Henry W. Ballantine, of the Law School of the University of Montana, who goes to the University of Wisconsin next year, gave a course in Contracts, and W. B. Cockley, of the Law School of the Ohio State University, gave a course in Property.

The work in Property in the regular course has been readjusted, so as to give a three-hour course throughout the first year and a four-hour course the first semester of the second year to all students. In addition, three advanced courses will be offered in electives. The course in Elementary Law has been discontinued.

Willard T. Barbour, who was compelled to discontinue his work in the Law School during the year on account of ill health, will not be able to resume his work for the present year.

Beginning in October, 1915, the University of Michigan Law School will require two years of college work for admission, in accordance with the resolution passed by the Board of Regents last April, adopting the recommendation of the law faculty.



The academic year is opening most auspiciously for the Law School of the University of North Dakota. There are no changes in the faculty. The enrollment is about the same as last year, perhaps a little better. It is expected that it will again exceed 100. Last year for the first time a large proportion, about half, of the first year law class had had three years of college work. The oth-

ers were, with one or two exceptions, men of maturity, only a very few coming directly from the high school, although at present a four years high school course is all that is required for admission. In the first year class the average age was 23½. These facts seem to indicate a widespread sentiment that maturity and a broad general education should precede the study of the law, and it is expected that announcement will shortly be made of a requirement of one year's academic work for entrance to the law school. This year's entering class appears to be equal in every respect to the preceding one. A determined effort was made during the past year to raise the standards of the school, and the resulting hard work and seriousness of purpose of the student body is most gratifying. Two new courses have been inaugurated this year. Roger W. Cooley is giving a course in Brief Making and the Use of Authorities one hour per week, extending throughout the year. Charles E. Carpenter will offer a course in Documents the second semester.

Luther E. Birdzell is still on leave of absence, giving his time to the work of the State Tax Commission, of which he is chairman. Harrison A. Bronson was elected a member of the State Senate last year, and has been very active in fathering progressive legislation. Prof. Carpenter and Dean Robert L. Henry, Jr., after getting out articles for Modern American Law, the one on "Suretyship" and the other on "Liens," spent the remainder of the summer on the Minnesota lakes. Messrs. Carpenter and Lewinsohn, who last year were assistant professors, were promoted to full professorships at the time of the June commencement exercises, and Prof. Cooley was awarded an honorary LL. M., in recognition of his numerous legal writings, chief among them being his "Briefs on Insurance."



Edward J. White, General Attorney for the Missouri Pacific Railway Company, will have charge of the course in Code Pleading in the Kansas City Law School. Mr. White received his LL. B. degree from the Law Department of the State University of Missouri, and practiced at Aurora, Missouri, before going to Kansas City. He is the author of the following publications: "Mines and Mining Remedies," "Personal Injuries in Mines," "Personal Injuries on Railroads," "Legal Antiquities," and "The Law in Shakespeare"—and editor of the third edition of "Tiedeman on Real Property."

Walter A. Powell, former judge of the Circuit Court of Jackson County, Missouri, a graduate of Dickinson College, Pa., and for many years a prominent member of the Kansas City Bar, has accepted the invitation of the Faculty of the Kansas City Law School

to deliver the course of lectures on "Pleading and Practice Under the Missouri Statutes" to the senior class.



Leonard T. Haight, for many years a successful and popular teacher of law, has resigned from the faculty of the Syracuse University Law School, on account of the demands of his private business. His retirement from college work is greatly regretted. His work has been assigned to other members of the faculty, except that Insurance is being taught by William H. Harding, LL. B., '98, of the law firm of Goodelle & Harding, Syracuse. Mrs. Florence Sherwood Wood, instructor in Elocution, has resigned, and that course is in charge of Hugh M. Tilroe, Professor of Rhetoric and Public Speaking in the University. A new course has been introduced, called "Legal Expression," to begin with the second semester of the first year and continue one year, one hour per week. It is the purpose of this course to afford the student adequate training in the specific methods of mental effort which are deemed essential to efficient work in the legal profession, in skilful arrangement of legal facts, in the application of rules of law to such facts, in all the modes of effective expression in the formulating propositions of law, and in the presenting of facts and the law to a court of justice.



Neal D. Reardon, A. B., University of Illinois, '00, LL. B., Northwestern University, '08, A. M., '11, took up his duties at the opening of the new school year as a resident full-time professor in the Creighton College of Law, Omaha, Neb.

Anson H. Bigelow, B. S., University of Nebraska, '87, LL. B., Creighton, '12, has been added to the teaching staff of this school. In addition to handling the Property courses, Mr. Bigelow will have charge of the Model House, a miniature legislative assembly now in its third year. Prior to studying law Mr. Bigelow was a member of the South Dakota legislature, and for many years was engaged in teaching, resigning his position as Superintendent of Schools at Lead, South Dakota, to study law.

This year's enrollment is the largest in the history of the school, now being 150; the total for both semesters probably amounting to about 165.

The Trial Branch of the Moot Court will be in charge of Professor Louis J. Te Poel, A. B., University of Nebraska, '02, A. M., Columbia, '05, LL. B., '05, Assistant City Attorney of Omaha, during the present school year.

During the past few months a number of additions have been made to the law library,

which is now quite complete in both American and foreign reports, as well as in text-books covering the usual subjects. A large number of books on practice and on the history and philosophy of the law have been added.



Charles E. Hogg, Dean of the West Virginia University College of Law, has resigned and returned to Point Pleasant, West Virginia, his former home. He will again take up the practice of law, and will complete two or three law books on which he has been working for some time. His successor has not yet been appointed.

V. Porter Hardman has been added to the law faculty, to teach Torts, Evidence, and History of Jurisprudence. Mr. Hardman was a West Virginia Rhodes scholar at Oxford, where he studied Jurisprudence, winning first honor. After completing his three years at Oxford he studied two years at Harvard Law School.

With the beginning of this college year, one year of academic work is required for admission to the Law School, and three years, or ninety-six semester hours, for graduation. Quite a slump in number of students was expected, but there is a falling off of only fifteen per cent., and as students may enter at the beginning of the second semester it is probable that the enrollment for the year will be approximately the same as last year.



The autumn quarter sessions of the Hamilton College of Law, of Chicago, opened most auspiciously on the evening of Monday, September 8th. A large new freshman class was in attendance to greet the members of the faculty and the upper class men. The new class rooms and college offices were beautifully decorated with flowers, and the day suggested Commencement quite as much as the advent of a new year of class study. Short addresses were made by President Neltnor, Mr. Macomic, Mr. Heims, Mr. McKeag, Mr. Alsager, and other members of the faculty. The college has made few changes in its faculty, but among the new men the students will listen to during the coming year will be Hon. Frank Comesford, who is well known as a Chautauqua lecturer, Col. Wallace H. Whigham, who is an experienced lecturer of years' standing in Chicago, and Hon. Warwick A. Shaw, who is well known to members of the Chicago bar.

New courses on Mortgages and on Municipal Law will be offered the students the coming year. The course on Oratory and Public Speaking will be again featured, and the student in special need of such work will, it is hoped, reap a greater profit than ever heretofore.

During the past year, Drake University Law Department, Des Moines, Iowa, suffered a serious loss through the death of Professor Chas. A. Van Vleck, who has, for the past eight years, been connected with this school. Mr. Van Vleck's ripe scholarship and attainments made him especially adapted as an instructor of the law.

Three new members have been added to the Drake University Law Faculty for the present year. Mr. Kenderdine will assume the courses taught by the late Professor Van Vleck. Mr. Kenderdine is a graduate of the State University of Iowa, and took his academic course in Cornell College, Iowa. He has had wide experience at the bar and in public lecture work, and was for two years the Michigan representative of the West Publishing Company, and in this capacity became thoroughly familiar with the use of the various legal publications.

Roy E. Farrand, a graduate of Drake University, will instruct the classes in Elementary Real Property, Law of Persons, Bailments, and Carriers. Professor Farrand is associated with Judge Utterback in the practice of law in the city of Des Moines and has a high record in scholarship and as an instructor.



C. B. Garnett, of the faculty of the Richmond College of Law, Richmond, Va., has resigned, and T. J. Moore, a graduate of the Harvard Law School of 1913, has been appointed in his place. Mr. Garnett had charge of Real Property, Pleading and Practice. Mr. Moore will have charge of the course in Real Property, and Mr. W. S. McNeill, Dean of the school, will have charge of the courses in Criminal Procedure, Civil Pleading, and Equity Pleading and Practice.

This year the school announced three special lecturers. Richard T. Wilson, clerk of the Virginia State Corporation Commission, will lecture on Procedure; Harem M. Smith, Assistant United States District Attorney for the Eastern District of Virginia, will lecture on Federal Practice; and Wyndham R. Meredith, of the Richmond bar, will lecture on Legal Ethics.



The College of Law of the State University of Kentucky commenced the matriculation of students Monday, September 15th, and the enrollment for the fall term is larger in numbers than the previous year and the students are better prepared for their work. Many of them are graduates of universities and colleges, and only four entered with conditions of entrance to be made up.

W. H. Townsend has been added to the law faculty and has commenced his work for the year.

Among the new books that have been added

to the Law Library, and which are now being placed upon the shelves, is a complete set of English Report Reprints and a complete set of the English Law Reports.

Two members of the Kentucky Court of Appeals have agreed to deliver lectures before the school during the year.



Several changes have been made in the faculty of the School of Law of the University of Missouri during the summer. Dean E. W. Hinton has resigned to accept a Professorship in Pleading and Practice at the Law School of the University of Chicago. For the present John D. Lawson, who retired from the Deanship a year and a half ago, will act as the Dean of the School. Mr. Lawson has been in Europe attending the meeting of the International Law Association during the past summer. He returned to the school early in October. Part of Mr. Hinton's courses will be taken by Mr. J. P. McBaine. Two new men come to the faculty of the school this year—George E. Clark, formerly of the Law School of the University of Michigan, who will teach Evidence, Equity, and Contracts; and Lee Walker, LL. B., of Missouri, 1912, who will teach the course in Torts.

The School of Law will begin this fall the publication of a Law Series of the University of Missouri Bulletin. This series is designed to deal with live problems of Missouri law for the benefit of the bar of the state and students of the school. A number will be published four times each year, and will include an article on some phase of Missouri law written by a member of the faculty, together with notes on recent Missouri cases prepared by students of the school under the direction of Charles K. Burdick.



Dean Edward W. Hinton, of the University of Missouri Law School, has been appointed Professor of Law in the University of Chicago, and will begin his work there October 1, 1913. He will be in special charge of the courses in Procedure and Evidence, and will also give part of the Pleading work.

During the summer quarter at the University of Chicago Law School, the work of the regular members of the faculty was supplemented by courses given by Dean W. P. Rogers, of the Cincinnati Law School, E. A. Gilmore, of the University of Wisconsin, D. O. McGovney, of Tulane University, and A. W. Scott, of Harvard University.



The Regents of Education have elected Marshall McKusick, Dean of the University of South Dakota College of Law, to take

the place of Thomas Sterling, who has been elected to the United States Senate. Mr. McKusick has been a professor in the Law School since 1902. Assistant Professor Vanneman has been made professor.

Several important changes have been made in the curriculum with a view to strengthening the course in Practice, and special emphasis will be placed upon practice courts.



The new Law School building of the University of Maine College of Law has been named by the trustees, at their recent September meeting. Stewart Hall. The gift of \$20,000 from Hon. D. D. Stewart of St. Albans, the Nestor of the Maine Bar, to be named the Levi M. Stewart fund, and to be held in trust for the College of Law, reported at the time in the columns of the American Law School Review, was the most important gift that the College of Law has ever received from any private source, and among such gifts to the University it is second only to the bequest of Ex-Governor Abner Coburn, given in 1885, and amounting to \$100,000. A brief history of the College of Law, with a reference to Hon. D. D. Stewart's gift, has appeared in the June number of the Maine Law Review.



Ernest U. Schroeter, of Chicago, has been appointed to the faculty of the newly organized Southwestern University Law School, Los Angeles, California. Mr. Schroeter will locate in Los Angeles about January 1st, where he will engage in active practice of law, in addition to giving instruction in the Law School. Mr. Schroeter was private secretary to Hon. Peter S. Grosscup, Presiding Judge, United States Circuit Court of Appeals, Seventh Circuit, and for a time was the attorney for the receiver of the Chicago & Milwaukee Electric Railroad Company. Since his graduation from the Northwestern University Law School in 1909, Mr. Schroeter has resided in Chicago.



The Detroit College of Law held its opening session on the 22d of September, with the largest enrollment in its history. The Dean announced the following changes in the faculty and curriculum for the coming year:

Lee E. Joslyn, referee in bankruptcy, has been appointed lecturer on the subject of Bankruptcy. John J. Danhof, one of the attorneys for the Michigan Central Railway, has been appointed lecturer on the subject of Suretyship. Lorne W. Weber has been appointed librarian and instructor in Insurance and Brief Making and Legal Bibliography. Mr. Weber will devote his entire time to the work of the school. William A. Krich-

baum has been appointed a professor in the school and will have charge of special courses in History and Development of the Law and in the Study of Cases.

During the coming year the number of class hours of the school will be largely increased. The first year class will hold two sessions per day and will have a minimum of ten hours per week of class work.



Hon. Shackelford Miller, for many years Dean of the Jefferson Law School, of Louisville, Ky., because of his election to the Supreme Court of Kentucky and the duties connected with his new position, has resigned the deanship of the Law School. He has been succeeded by Hon. Thos. R. Gordon, Judge of the Jefferson Circuit Court, who has been with the school since its beginning. Judge Miller continues as lecturer on the subject of Equity and Appellate Procedure.

The school has added some eight new men to its faculty, and in addition to its regular Bachelor course, it has a post-graduate course, leading to the degree of Master of Laws.



Henry Winthrop Ballantine, formerly Dean of the Department of Law, University of Montana, has been appointed professor of law in the Law School of the University of Wisconsin. Professor Ballantine is a graduate of Harvard College in 1900; Harvard Law School, 1904. He was in active practice in San Francisco from 1904-1911, incidentally lecturing on law at the University of California School of Jurisprudence and the Hastings College of Law. Professor Ballantine taught in the summer session of the University of Michigan during the past summer.

Dean H. S. Richards, of the University of Wisconsin Law School, who has been abroad on a leave of absence during the past university year, has resumed his duties at the Wisconsin school.

E. A. Gilmore, of the University of Wisconsin Law School, who is absent on leave during the first semester, is traveling in Europe.

Eldon R. James, of the University of Wisconsin Law School, has been appointed professor of law in the University of Minnesota, assuming his duties there at the beginning of the present university year.

James P. McBaine, of the University of Missouri Law School, and Wm. E. Higgins, of the University of Kansas Law School, offered courses in the summer session of the University of Wisconsin Law School.



The faculty of the Washburn Law School, Topeka, Kansas, has been augmented by the

appointment of P. H. Dodge as a resident professor of law. Mr. Dodge stands high both as a student of the law and an instructor. He is a graduate of the University of Chicago, taking the degree of Juris Doctor from that school. Later he studied law in the University of Oxford, England. He has had teaching experience, both in high school and in the law department of a university. He has been admitted to practice in Illinois and Colorado. For a time he practiced in New York City, and was recently connected with the legal department of the Union Trust Company of Chicago.



In compliance with the public demand for thorough instruction, the University of Tennessee has now a three-year curriculum of law. The faculty now consists of five members, Dean Ingersoll, Professors Turner, Neal, and Jourolmon, and Mr. Knabe, who instructs in the Jurisdiction and Procedure in Justice Courts. By special arrangement Karl E. Steinmetz will hereafter give instruction in Legal Bibliography, showing the scope and use of law books, and how to become familiar with them.



The Benton College of Law opened for its eighteenth annual session on September 15th. The enrollment on the first day of school exceeded 250 students.

A moot court has been established in the post-graduate department. Forest Gerris, former Assistant Attorney General, has been appointed to preside as judge in the moot court proceedings. The practical work in court procedure will be taught during the entire year.



I. M. Wormser has resigned from the faculty of the University of Illinois Law School to accept a professorship in the Fordham University Law School, New York City. Mr. Wormser succeeds the late William E. Keener on the Fordham faculty. Warren F. Pillsbury, now teaching in the University of California, has been appointed to fill the vacancy in the University of Illinois. Mr. Pillsbury holds an academic degree conferred by the University of California and the J. D. degree conferred by the same institution. In addition to his academic work, he has had two years of law training in the University of California and two in the Harvard Law School. He will begin teaching in the University of Illinois at the beginning of the next semester, February 1, 1914.



John E. Macy has resigned from the faculty of the Boston University Law School, and the work given by him formerly will be

now under the direction of J. Porter Crosby in Corporations, Fred T. Field in Municipal Corporations and Constitutional Law, Owen A. Cunningham in Agency, and Orville W. Smith in Suretyship.

J. Merrill Boyd, who has acted as Secretary of the Law School and Instructor in Logic and Economics for a number of years, has accepted a position in the Legal Department of the Employers' Liability Assurance Company.



The Chicago Law School has three distinct practice courses, for the freshmen, juniors, and seniors, and added to this a regular *in prius* practice court. The senior students are required to visit the federal, state, county, and city courts, so that they obtain a knowledge of each, and prove the same by briefing two cases a month and filing same with the chancellor of the school.

Mrs. Catherine Waugh McCullough has been elected Dean of a Woman's Department of Law, which has been lately established in the Chicago Law School, not for the purpose of preparing women for the practice of the law, but to instruct women in the law of domestic relations, for the guarding of their vested rights, and especially to make a propaganda for the efficiency of the administration of justice.



Charles L. Williams, A. M., LL. B. (Columbia), has been appointed Assistant Professor of Law at Cornell University Law School, and will conduct this semester the courses in Insurance and Quasi Contracts.

The Conkling Chapter of Phi Delta Phi celebrated the twenty-fifth anniversary of its foundation last May, and at that time presented to Cornell University a fund for occasional lectures in the College of Law, to be called "The Frank Irvine Lectures."



The American Central Law School, at Indianapolis, opened this year with an increased attendance, despite the fact that the qualifications for enrollment have been raised and the tuition somewhat increased. The school year has been extended from 35 to 40 weeks. Mr. John A. Lapp, Indiana Legislative Reference Librarian, has been added to the faculty, and will lecture on Modern Legislation. The junior moot and senior practice courts will be given special attention, the time assigned to each having been largely increased. The school contemplates adding a full two-year day course and making the evening course cover three years, with an option to the student of arranging the schedule so as to take the same work in two years, effective beginning next fall.

Louis M. Greeley, of the Faculty of Law of Northwestern University, after a year's absence spent in San Diego, Cal., has returned to Chicago, his health completely restored, and will this year resume his courses in Carriers, Negotiable Instruments, Mortgages, Conveyancing, and Public Utilities.

George P. Costigan, of Northwestern University Law School, has gone to the states of Colorado, Utah, Nevada, and Nebraska, as investigator into the system of bar examinations, on behalf of the Carnegie Foundation.

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To fill the vacancy in the University of Kansas Law School caused by the death of Henry Clinton Hill, Edward Delahay Osborn, of Topeka, Kansas, has been added to the faculty. Mr. Osborn practiced law for a number of years in Topeka, and for the past six years has taught in the Washburn Law School at that place.

Mr. Raymond Fridman Rice will take charge of the practice court work during Prof. Higgins' two years' leave of absence. Mr. Rice is a practicing attorney in Lawrence, Kansas, and a graduate of Oberlin College and of Kansas University Law School. H. W. Humble, for the past five years associate professor of law, has been promoted to rank of professor.

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Albert M. Kales, of the Faculty of Law of Northwestern University, has been elected a director in the newly formed Lawyers' Club of Chicago, which will occupy an entire floor in the new Conway Building. This club aims to render the same service in Chicago that the Lawyers' Club has long rendered in New York, by affording a central home for daily professional fellowship.

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The Vanderbilt University Law School has lost the services of Prof. Charles S. Lawrence, B. A., LL. B., who was appointed by Attorney General McReynolds in June last to a position in the Department of Justice, Washington. The vacancy has been filled by the Vanderbilt Board of Trust by the election of Charles H. Wilber, Ph. B., J. D., University of Chicago, who has already taken up his work in the Law School. Mr. Wilber

gives his whole time to teaching in the Law School, and has been assigned the following work by the Dean of the Law School: Equity Jurisdiction, Common Law and Equity Pleading, Criminal Law and Procedure, and Evidence.

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The Faculty of Valparaiso University Law School remains the same this year, except that it is expected that Hon. E. D. Crumpacker, former Congressman from Indiana, will do considerably more teaching than he has done within the last few years. The Law School has enrolled over 90 first-year students thus far and the number will most probably exceed 100 during October.

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A text-book on Pleading and Practice of Common Law, by Martin P. Burks, Dean of the Washington and Lee University Law School, was published last summer. This new practice book has already been adopted for class use in the University of Virginia Law School and in the Washington and Lee University Law School.

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Albert H. Putney, Dean of the Webster College of Law, Chicago, Illinois, has been appointed by President Wilson as Chief of the Near-Eastern Division of the State Department at Washington. Mr. Putney hereafter will reside at Washington.

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The Evening Department of the Suffolk School of Law, Boston, Mass., opened September 15th with the largest attendance in its history. The freshman class contains over 75 young men. There are no faculty changes in the school this year.

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J. Wilmer Latimer, of the Faculty of George Washington University Law School, was, during the summer, appointed by the President of the United States Judge of the Juvenile Court of the District of Columbia, and is performing his new duties in an eminently satisfactory manner.

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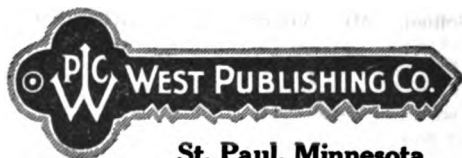
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An Intercollegiate Law Journal

A. F. MASON, Editor

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A. F. MASON, Editor

Vol. 3

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No. 8

The Function of the State-Supported Law School*

By WILLIAM R. VANCE

Dean of the University of Minnesota Law School

WHAT IS THE FUNCTION of a state-supported law school? One is tempted to answer this question summarily by saying, "To make good lawyers." But no law school can possibly do that. It is only the Creator that can make lawyers. The intellectual ability, the temperament, and the personality necessary to real success at the bar are God-given. The man who has the lawyer's qualifications in a pre-eminent degree will achieve distinction at the bar, though he comes from an inferior law school, or from none at all; and, on the other hand, the training given by the best law school in the land cannot fit for success at the bar a man who is intellectually and temperamentally unsuited to the profession. The best that can be expected of the law school is that it shall train those naturally fitted for the legal profession for a broader, more efficient, service to the state, for an earlier and

more complete success as counsellors and barristers.

RELATION OF THE LAW SCHOOL TO THE STATE

In considering the function of the state-supported law school, this fundamental principle must never be lost sight of; that is, that a law school maintained by the state is to be conducted in the interest of the people of the state as a whole, and not merely for the benefit of the lawyers as a class, or for the benefit of those young men who seek admission to the bar as a means of gaining a livelihood. It is quite true that the welfare of society is promoted by enabling every member of it to earn a living by engaging in that employment best suited to his tastes and talents. But this is not the primary motive of the public maintenance of professional schools.

The people of the state desire that the most sanitary conditions that modern science can establish shall prevail, so as to

*Based upon an address delivered before the Minnesota State Bar Association.

conserve human life and health; hence they provide in the State University the best possible training for the young physicians. They know that the welfare and wealth of the state are directly dependent upon success in winning ample foodstuffs and raw material from the soil; hence they provide the best known scientific training for the farmers of the state. In like manner the people have slowly come to understand that the welfare of society demands that their laws shall be wisely and justly made and fairly and honestly administered; hence they seek to provide for the proper training of the men who are to be the lawyers of the future.

In considering the problems of legal education, it is important always to keep in mind this fundamental principle just stated. We are too apt to draw general conclusions from particular instances. For instance, in fixing requirements for entrance to law schools or for admission to the bar, we are disposed to keep in mind such rare geniuses as Patrick Henry and Abraham Lincoln, or their lesser analogues at some local bar, who have achieved honor and fame at the bar without preliminary education, and forget entirely the thousands of shy-sters, ambulance chasers, and other unworthy members of the profession, whose misdeeds are doing more than all other agencies combined to bring the profession into public contempt and to destroy that respect for the law which is absolutely essential to the success and happiness of any organized society.

Still another very admirable characteristic of the legal profession works toward the same unfortunate result. Despite the sharp conflicts at the bar, ours is a kindly profession. The older members of the bar are always ready to lend a helping hand to a younger brother, and

particularly do they look with sympathy upon the competent young man who is struggling against adverse conditions to secure admission to the bar. Hence, again having the particular individual only in mind, they oppose the raising of requirements for admission to the bar or to the law school, not realizing that the same rules that let in the one admirable and exceptional man will also introduce into the ranks of the profession hundreds of ill-qualified persons, who can make a living only by trickery and preying upon the public.

The avenue of approach to the profession should be kept open to all, but the bars that test the candidate's ability to travel the hard and rough road ahead should not be lowered. No young man who has in him the stuff that lawyers are made of is going to be permanently barred from the profession by any reasonable admission requirements. And we must not forget that it is no real kindness to a young man to send him to the bar if he is not qualified to make in the law the honest living that he might easily make in some other calling. It may also be a very real injury to society, for many a young lawyer who is unable to earn a living legitimately has been driven to trickery and crime by sheer want. It is estimated that quite forty per cent. of the hordes of men in New York City who hold themselves out to practice law are without sufficient legitimate business to afford a living income. Some of them starve, others steal, and only a few go to Sing Sing.

The physicians, the dentists, and even the horse doctors have put their requirements for admission far above ours. Those young men of the sort who follow the line of least resistance, who are looking for an easy way to make a living—the very kind we don't want in the pro-

fession—finding that a lawyer is required to know less than a physician, a dentist, or a horse doctor, will flock into the law.

TEACHING PRACTICE

Leaving these more general aspects of the subject, let us consider for a moment the immediate and obvious function of the law school to prepare men technically for the practice of the law. Twenty-five years ago it was not difficult to find lawyers of standing and ability who held the law schools in ill-concealed contempt, so thoroughly were they convinced that the law office was the only place for the education of the young lawyer. But this debate was finally settled years ago in favor of the law school, and now we are in a position to consider constructively the limitations of the law school. Lawyers engaged in active practice are often shocked and pained by the ignorance of law school graduates upon the simplest points of practice, and many amusing stories are told of the blunders made by them. On the other hand, young men who have gone to the bar through law offices and have been admitted to advanced standing in the law school, not infrequently surprise and grieve the teacher of law by their colossal ignorance of the simplest principles of substantive law.

At the present time I think there is no man connected with a law school, who is fair-minded and reasonably intelligent, who will not admit that the training of the law school is weak on the practice side. The law school may teach with great profit the theory of evidence and pleading, but it can do little in teaching the art of examining and cross-examining witnesses, or of drawing pleadings adequately and precisely. It can teach the nature and use of the demurrer and

other dilatory proceedings, but it cannot with any degree of success supply that good judgment in the use of them which a good lawyer acquires through practice, and a poor lawyer never acquires at all. In short, we are now prepared to say that, while the law school can teach the substantive law better than the law office, the right kind of law office can teach practice far better than the law school.

Reasoning from this accepted fact, one of the greatest of American law schools has concluded that sound economy requires the law school to confine its work to substantive law and leave the practice to the law offices. There is much in this contention; for we all know that the student can give all of the three years embraced in his law school course to the substantive law, and yet know relatively little about it. Perhaps the course of the school referred to may be justified, in view of the fact that a large proportion of its graduates readily find positions in good law offices. But in the Western states, where many of the law graduates are so circumstanced that they must begin practice on their own account, the situation is different, and it is necessary for us to use our best endeavors to teach practice efficiently.

In the University of Minnesota Law School we are earnestly trying to fit our graduates for the actual practice of the law. It is unreasonable to expect them to be finished lawyers when they leave the law school. How many men are finished lawyers after five years at the bar, or even ten? But we are trying to train them so they can institute and prosecute to a final conclusion any ordinary court proceeding with reasonable safety to the cause intrusted to them. All of our procedural courses are taught by men who now are, or recently have been, in active

and extensive practice. Some of the most distinguished lawyers and jurists of the state deliver courses of lectures upon topics connected with practice. Practice courts are maintained, in which proceedings instituted upon given statements of facts are made as nearly like those in a real courtroom as possible.

But making a moot court to look like a real court is a hard task. The human element is lacking. There are no real interests at stake, no real personalities in conflict. The penalty of a misstep is not the loss of a cause, a client, or of hopes of professional advancement. At most it is a bad mark on a little book. I do not mean to say that the students do not fight these mock battles with enthusiasm and considerable zeal, for they do. But nevertheless it is not the real thing. The human element is lacking.

How can this human element, the touch of reality, be supplied? We think we have found a way in a plan never before fully tried, so far as I know, by which we can provide for law students something of the same kind of clinic which medical students find in the hospital and free dispensary.

There has recently been established in Minneapolis by the Associated Charities, working in close co-operation with the University Law Faculty, a Legal Aid Bureau. This is a most excellent charity, organized along the lines of the Legal Aid Societies that have existed for many years in New York, Chicago, and other large cities in the United States. The purpose of the Bureau, broadly stated, is to provide means of securing redress for petty wrongs done to poor people, and for giving legal advice to poor persons in trouble.

Examples of the kind of cases handled by the Bureau may be given as follows:

Wages amounting to \$5 are wrongfully detained from a penniless servant girl, or some landlord illegally refuses to allow a workman to remove a trunk that contains the pitiful sum of his worldly goods. Under ordinary conditions such a poor person is without remedy. Without a lawyer he does not know what steps to take, and the lawyer who has to make a living cannot well afford to handle such a case; and even if, moved by charity, he should do so, it would be very wasteful to expend \$20 worth of work and time upon a \$5 case. But a special bureau, organized to handle such cases, and dealing with them in large numbers, can afford the needed relief at no very great expense to those who support the charity.

The Legal Aid Bureau of Minneapolis is organized somewhat as follows: A general committee on legal aid has been appointed by the officers of the Associated Charities. From this general committee in turn is appointed an executive committee of five members, among whom are included the President of the Associated Charities, the City Attorney, and the Dean of the University Law School. This executive committee employed an attorney, a graduate of the University Law School, at a stated annual salary, as attorney for the Bureau. Offices were provided, as well as stenographic assistance. The attorney of the Legal Aid Bureau has also been appointed an instructor in Practice in the University Law Faculty. The members of the senior class of the University Law School are assigned, two each week, the duty of being present in the office of the Legal Aid Bureau from 1 to 6 p. m. each day. The students thus assigned will be required to talk with clients as they come into the office, endeavor to

determine in such conference the facts and the rights of the case, and then report in writing to the attorney of the Bureau, stating to him what advice they think should be given under the circumstances. The attorney will confirm or modify the proposed advice, and in such form the student will give it to the client.

If it turns out, as usually is the case, that an investigation must be made in order to determine the real facts, the student will be required to go out and interview the party complained of and such other persons as may have knowledge of the facts. He will, of course, endeavor to secure a settlement upon just and reasonable terms. Or it may be that he will become satisfied that the complaint made to the Bureau was without foundation. If, however, after obtaining the facts as completely as possible, he is convinced that the complaint made to the Bureau is well founded, and finds that he can make no satisfactory settlement, he will prepare, under the guidance of the attorney, to institute such proceedings as may be necessary to secure the rights denied his client. The great majority of cases that come to the Bureau can be settled without court proceedings, by the exercise of tact and good sense; but the occasional case which is found to require proceedings in court is regarded as the case of the student to whom it was first assigned, through all of its different stages, until finally disposed of. The student is expected to prepare under supervision the papers in such case and to be present in the court whenever any steps are taken in such case by the attorney of the Bureau.

At least once during each week one or more of the members of the University Law Faculty visit the office of the Bureau, look over the records and generally

supervise the work of the attorney and his student assistants. At the end of each week the attorney of the Bureau who, as heretofore stated, is an instructor in the Law Faculty, will make to the Law Faculty a report of the work done by the two students who have been serving as his assistants during that week, as well as the work of any students who have pending court cases.

The extent and variety of the business that comes into the office of the Bureau can best be shown by an abstract from the attorney's report covering the work of the office from the date of its opening, April 15, 1913, to December 31, 1913:

Total number of cases.....	1,039
Number disposed of.....	864

Carried over..... 175

Classification of Complaints.

Alimony	7
Advice	12
Attorney and client	9
Contract	38
Collection	67
Compensation	1
Chattel mortgage	3
Crimes against children	3
Desertion	4
Detention of property	17
Domestic	47
Damages	15
Dependency	2
Employment offices	12
Fraud	15
Foreign matter	3
Garnishment	23
Insurance	2
Liens	4
Loans	36
Landlord and tenant	41
Miscellaneous	38
Miscellaneous criminal	1
Insanity	1
Personal injury	12
Probate	3
Notes	2
Nonsupport	8
Pension	3
Pawnshop	1
Real estate	15
Support	1
Wages	598

Total 1039

Disposition of Cases.

Advice	129
Settled	295
Closed:	
1. Lack of merit.....	66
2. Probably settled	69
3. No return	145
4. Collection impossible	36
5. Dropped on request of client...	3
Suit	34
Referred	40
Refused	47
Total	864

Earnings.

Nominal fee	\$ 42.29
Commission	71.08
Total	\$113.37

Recoveries and Collections.

Collections	\$2,725.11
Property recovered	411.00
Probably collected	654.30
Money saved from loan sharks.....	394.53
Total	\$4,184.94

A nominal retainer fee of ten cents is charged, and a commission of ten per cent. for collections; but both charges are usually remitted.

Furthermore, the human element which we so much desire is most abundantly present, as the cases present the seamiest side of human nature; and the facts often reveal in a heart-rending manner the inexpressible sorrows of the unfortunate. This work is surely a noble charity, in which it will be well for the young men in the Law School to become interested. And may we not hope that such an intimate acquaintance with the misfortunes of the poorest and weakest members of society may bring these young men, who will have much to do with governing the state in the next quarter century, to undertake their work as makers and administrators of law with a little keener appreciation of the claim which the weak have to protection against the strong—that this experience will make them better citizens, as well as better lawyers?

GRADUATE INSTRUCTION AND RESEARCH
IN THE LAW SCHOOL

There is still another duty which the State University Law School owes to the profession and to the people of the state who support it; that is, to make some real contribution to the knowledge which we have of law and its operation. Research work is carried on in almost every department of our great state universities. Busy research professors and graduate students search zealously for new truth in chemistry, physics, geology, agriculture, or history; but there is practically no research work done in our law schools, except such as is incident to the preparation of books and magazine articles by the professors or in their writing of occasional briefs on appeal.

In the University of Minnesota special funds are appropriated, and wisely appropriated, for conducting researches upon problems involving systems of ventilation, ore deposits, the commission form of government, and also regarding problems of mediæval history, early English literature, and the like; but no money is spent by the Law School in the effort to throw more light upon the innumerable problems that arise in connection with the application of jurisprudence to modern social conditions. For instance: What is the total actual cost to the public of maintaining the courts of the state during any given year, and what proportion of that cost can be rightly charged to the personal injury litigation? To what extent have employers' liability acts reduced the amount of litigation in states in which such acts are in operation?

Again, it is loudly alleged and pretty generally believed that there are many delays in our courts that could be obviated. Are the delays in fact unreasonable, or is it merely a matter of orderly

and dignified procedure in determining the right of matters in contest? Why not investigate the records of some important county and demonstrate the one thing or the other? If there are unreasonable delays, to what are they to be attributed? Is it due to defects in the system of procedure, or to the lack of efficiency on the part of the judge, or to the laziness, carelessness, or other faults of counsel? Why should we not find out?

Again, the Supreme Court of the United States, in its new equity rules, has abolished all demurrers. It has been proposed that the demurrer shall be abolished in procedure in Minnesota courts. Some lawyers think such action would tend to lessen delay, whereas others are convinced that the demurrer often disposes expeditiously of a contest that might otherwise drag on for a long time through the courts. What has been the record of the demurrer in those cases that have come to the Supreme Court of Minnesota within the last twenty-five years? In the law library we have the paper books and other records of all those cases. A critical examination of these records would show what the demurrer has done, and it would be possible to exhibit in tabular form the results of its use during that period. From such information it is probable a reasonably accurate conclusion could be drawn as to whether the demurrer is a good or a bad feature of our practice.

Again, take the law of corporations and the many commercial misdeeds that have been done in its name. The incorporation laws of each state differ from those of every other, and the laws of all the states are believed to be sadly defective. Innumerable remedial statutes are proposed in our legislatures, and some of them are passed. One of the

most interesting is the so-called "Blue Sky Law" of Kansas. The operation of this Blue Sky Law and other measures of similar purport greatly needs analytical study. Committees of bar associations and individual lawyers have given liberally of their time and labor in the effort to work out some of these problems; but it is too much to expect that a committee of busy lawyers, hard driven by the demands of their own practice, can give or should give enough time and effort to carry on the laborious and painstaking investigations that are required to secure the facts necessary to be had in dealing with these problems.

The University Law School ought to be so equipped and organized as to make it possible for it to carry on this kind of research, not only for the benefit of the students actually being trained, but also for the benefit of the profession and the people at large, who need reliable information. Therefore a graduate department of the Law School ought to be established, in charge of at least two professors competent to carry on research work of the kind needed. They should conduct courses in the critical study of divers legal problems with special reference to the legislative activities of the time.

Of course, there are many difficulties in the way of establishing such a graduate department. In the first place, it would require the appropriation of more money to the Law School. But, even if the money were available, it would be exceedingly hard to find the men suited to serve as research professors of law. Not only would it be necessary for them to have had experience in graduate work in some institution of high standing, but they would also have to be men of ability, forcefulness, good judgment, and possessed of as wide an experience as

possible in the actual administration of the law. It would be extremely difficult to get men with these qualifications to

serve for such salaries as we can reasonably hope to pay in any University. But the end is worth the effort.

Legal Aid Societies

Their Nature, History, Scope, Method, and Results

By WILLIAM E. WALZ

Dean of the University of Maine College of Law

I

LEGAL AID SOCIETIES are generally unincorporated and voluntary associations, rarely ever corporate bodies, established by private individuals, or else by representatives of the most various interests, such as associated charities, social settlements, bar associations, or, in one case at least, city governments, such as the Board of Public Welfare of Kansas City, the only municipal legal aid society in existence in this country.

The purpose of legal aid societies is to render gratuitously, if necessary, to all that appear worthy thereof, such legal assistance as, by reason of their poverty, they are unable to procure for themselves. By reason of their manhood they are entitled to what is due to them; in other words, they are entitled to justice, the greatest interest of man on earth, but they are unable to secure it, because they are unable to help themselves by securing the services of a lawyer. In theory, justice is free; but, in practice, it cannot, like salvation, be had without money and price. Hence frequent impositions upon the poor, because they are helpless and unable to take the very first step towards obtaining justice. Such is the condition of the men, wo-

men, and children that a legal aid society proposes to help.

There are two laws, both absolutely essential to the success of this movement: First, the case must be unquestionably meritorious; and, second, the applicant must be unable to secure the services of an attorney by reason of his poverty and by reason of the small amount of money and property involved in his claim.

II

The first legal aid society was established just thirty-eight years ago. It was early in 1876 that a number of public-spirited Germans in New York City established the German Law Protection Society, not for charity, but for justice, and the enforcement of all just and honorable claims on the part of such poor German immigrants as were imposed upon by reason of their general inexperience of conditions in the New World. The society prospered, not so much financially, as morally and socially, and soon became the refuge of the poor and oppressed of every race. So much so that in course of time, as in the case of the Chicago Legal Aid Society later on, the number of United States citizens applying for its aid exceeded that of any other nationality, the German included. In 1890,

Arthur von Briesen, a prominent attorney in New York, was elected its president, and now the society had a man who was destined in due time to become the father of the legal aid society movement both in the United States and in Germany. Under him the society changed its name from German Law Protection Society to the *Legal Aid Society of New York*.

A small fee of ten cents had been charged from the beginning, because the earlier applicants had been unwilling to accept as a charity what they were able to pay for, at least in part; and, later on, ten per cent. of all sums above ten dollars recovered for applicants was charged by the society and used for current expenses. Full members of the society paid \$20 and associate members \$10 a year. From its beginning the society refused to collect claims for storekeepers, but did all it could to secure the rights of wage-earners, men, women, and children, without any distinction of nationality, religion, or race; and in all its dealings it strictly carried out the principle that, before any legal steps were taken, both sides to a case should be given a full, fair, and impartial hearing. In 1896 men like Joseph L. Choate, Elihu Root, and Theodore Roosevelt were proud to be enrolled as honorary members of the society. In all practical matters, Carl Schurz co-operated with Arthur von Briesen and the society, both financially and by giving much of his valuable time, to the great benefit of the society itself and the protection of the poor in New York.

In 1912 this legal aid society had eight flourishing branches in New York City. It published the *Legal Aid Review*, the *Log Book for Sailors*, and the *Guide for Immigrants*. In that same year it aided

37,796 people, nearly half of them not only United States citizens, but also native-born. Of all these 37,796 cases it carried only 2,448 cases into court, or less than seven per cent. of the total; and of these cases it won nearly ninety per cent., full proof of the great care used by it in sifting the evidence and getting at the facts before taking legal proceedings. The rule that a man must be poor before the society would aid him was strictly maintained, and a poor man was defined as one whose income is just sufficient to maintain himself, but insufficient to meet extraordinary demands. The average poor man applying for legal aid at its offices has been ascertained by the Cleveland society to be a man that earns on the average eleven dollars a week and has a wife with anywhere from three to eight children. Verily, not a man that can afford to spend much for law; and yet a man in need of justice more than almost any other mortal, the fatherless, motherless, helpless little child alone excepted.

In 1911, on November 11th, under the auspices of the Pittsburgh Legal Aid Society, the First Conference of Legal Aid Societies was held in Pittsburgh, and inquiry showed that 17 legal aid societies were then in existence. In 1912, on November 15th, the Second Conference was held in New York City, attended by representatives from 16 legal aid societies, and the National Association of Legal Aid Societies was then established. The legal aid societies represented on this occasion were those of New York City, Baltimore, Boston, Colorado Springs, Chicago, Cincinnati, Cleveland, Kansas City, Philadelphia, Pittsburgh, Westchester County, St. Louis, and other cities.

The legal aid society movement, so well started in New York City, is spread-

ing over the whole civilized world. But in Germany it was destined to enter upon a career of triumphant progress. Following the example set here, the men leading in this movement found in Germany a soil wonderfully well prepared for a social reform of this nature. In 1911 there were in that country 307 nonpartisan and philanthropic legal aid societies, 626 societies maintained by the churches, especially by the Catholic Church, and by political organizations, Social-Democratic, Conservative, and Liberal, and 83 societies for women exclusively—or 1,016 in all. These societies in their legal advice offices had, in the year 1910, considered no less than 1,546,971 cases and prepared no less than 418,873 legal documents, all without hurting the interests of the legal profession, but all greatly benefiting the poor people and reducing rapidly, and more effectively than any other agency, the church only excepted, the fierce resentment of the poor and oppressed, as well as the bitter spirit of revolutionary anarchy at one time so rampant in that country.

III

The scope of legal aid society work naturally divides itself into two great divisions: Wage claims, on the one hand; and matrimonial cases and domestic difficulties, on the other. However poor a man may be, there are always two points where he is vulnerable. Whatever touches his wages or his family goes home directly to his life and to his soul. Hence, under the first great division, legal aid societies have always dealt with wage claims, collections, landlord and tenant disputes, and contract and loan cases.

In the case of loans, legal aid societies, after ascertaining the true facts, have

generally made a tender of the amount really due, and, if refused, have deposited the tender in a bank, notifying the claimant of the fact, and sending him a check "in full settlement" indorsed upon it. If accepted, that settles the case; if refused, the money is in the bank, and the burden of going to law is placed on those shoulders that can most easily bear it.

As regards domestic difficulties, the second chief division of legal aid society work, the great problem is desertion by the husband, nonsupport, wife and child abandonment. In the absence of statutes, the courts do not see how they can imprison the man for failure to discharge debts and duties that he owes his family; and, if they did imprison him, they do not see how that could help the wife. Yet if a man will not work for himself and family, why should he not be made to work for the state, such work to be regulated by a wise parole system, and made fruitful for the man's family?

Divorce cases are not generally taken by any of the legal aid societies; never where the party applying does so merely with a view of marrying another, and never in jurisdictions where the court allows the attorney for the wife the fees paid by her husband for the maintenance of her suit. Exceptions to this rule rarely ever occur. The entire matter is really one, not for the law, but for common sense. In many cases, domestic troubles are due, not so much to poverty, but to liquor, sickness, and laziness, and are well taken care of by the associated charities of our cities, with the legal aid societies standing at their back, giving notice to saloon keepers not to sell liquor to such and such parties, etc., proceedings on the part of the society in support of the measures of other charities

that often prove the turning point in a given case, chiefly because the legal aid society inspires among evildoers a wholesome dread of consequences likely to follow the violation of law.

Petty crimes are not generally taken by legal aid societies, but left to the probation officers, as time and lack of facilities generally forbid the extension of their work in that direction. Where, however, the man accused of crime can give no bail, has no money and no friends, not even the professional bondsman that insists on his pound of flesh, there is a tendency to extend legal aid in such cases, especially where the societies have a surety company of a benevolent disposition at their side, such as the American Surety Company in Cincinnati, that will furnish all the bonds required for a small consideration, so that the want of money may not prevent a man's obtaining justice.

Another point to be noted is the practice of the societies not to take up bastardy cases. A few exceptions here and there only go to prove the rule. Very little, often nothing at all, can be done in the best of these cases. In Massachusetts many defendants will offer a ridiculous sum in repair of the wrong done, and, if it is not accepted, too many of them are willing to go, and do go, to jail for 90 days, at the end of which time they will take the poor debtors' oath.

Another class of cases not taken by legal aid societies is that of personal accidents. Where there is a Workmen's Compensation Act, as in Massachusetts and in an ever-increasing number of states, there is little need for activity of this kind. But, even apart from this, the weight of opinion among legal aid societies is overwhelmingly against going into work of this nature. The New

York society will not take an accident case, except so far only as to try to arbitrate the matter; so far, and no farther. The Cleveland society will not take up a personal injury case, except where the injury is so small that no lawyer could afford to take it, making that the criterion of its action.

As regards servants' cases, so far as known, no case has been taken up where servants have left their mistresses abruptly, without a moment's notice, and at the most unexpected and most inconvenient times. "Who comes into equity must come with clean hands."

IV

As regards the methods followed by the societies, the great point is to avoid, on the one hand, interfering with the regularly established practice of the members of the legal profession, and to guard, on the other hand, against the reproach so frequently heard that legal aid societies are merely a new-fashioned scheme for lawyers to get business. So little is this the case that, if it happens that a man able to pay an attorney applies for aid to a society, he is not even referred to a particular lawyer, though he should request it, and even urge it. Such a man's case is really wholly outside the scope of a legal aid society's activity, and no society will knowingly step outside the limits of its proper sphere.

The legal aid societies do not stand for the applicant, so much as for what is right and just between man and man, regardless of wealth, position in society, religion, and race. The society is a peacemaker and arbitrator, not a lawyer that defends his client in any case and at all events. Hence there have always been men claiming that a legal aid

society had no right to charge any fee, even though it be but a dime. This view has not been generally accepted. Where the applicant is capable of paying, he is expected to pay a nominal fee, not less than ten cents, not more than twenty-five, and also ten per cent. on all sums collected exceeding \$10, all of which money goes towards defraying running expenses, such as room rent, payment of an attorney, stenographer, etc.

The practice of the New York Legal Aid Society has apparently established this view, and is based on a desire to save the applicant's self-respect. The reasons opposed to this practice are two: First, that the legal aid society is a charity, and not a collection agency; and, second, that it reserves to itself the right at any time to decide against its clients where justice requires it. As a fact, however, this charging of ten per cent. is a matter of theory rather than of practice. It is the rarest thing for a legal aid society, that of New York excepted, ever to get a claim exceeding eight dollars. For years the society will find the maximum collection to be between five and seven dollars while the minimum claim often goes as low as fifty cents.

How do applicants come to know of legal aid societies? In the most various ways—through items in the newspapers, through friends of former applicants, through charitable organizations, especially through children's aid societies, through court officers and judges, through county attorneys, through employers and business houses, and through lawyers, who refer poor clients to the legal aid society. Of 7,291 applicants at the Harlem branch in New York City, no less than 1,426 were referred to the society directly by the courts

themselves; all the direct result of the society's policy of adjusting difficulties by informal arbitration, and not by litigation for its own sake. Thousands of instances exist showing the happy results of such a policy.

It must be admitted that there are in the legal profession men wholly unworthy of their high calling. It is also true that it is a difficult thing to get a lawyer to sue his brother lawyer, shyster though he be. One local bar association in New England, when referring a case of oppression by an unscrupulous lawyer to the local aid society, does so with the express request that it investigate the case, and with the implied request that, if necessary, it sue the delinquent attorney, especially in cases of petty embezzlements and overcharges practiced upon the poorest of the poor.

One method followed by legal aid societies in the prosecution of their work is the employment of students of character and merit, who aid the society in its work, not by practicing law, but by finding for the society's attorneys, not only what the law is, but also, what is often far more necessary, viz., what the real facts are in the case, the facts that can be proved. In the Northwestern University Law School students are permitted to assist the Chicago Legal Aid Society as a reward and proof of the merit of their work at the school. It is with them work without pay, or rather, the work itself is its own reward.

V

The results of the legal aid society movement have generally been merged in the general work that is being done by all good citizens everywhere for the welfare of their fellowmen. The sorrows

of the poor are known only to the poor; but their wrongs are now being brought to the notice of the nation, chiefly through the publicity that results from the work done by the legal aid societies. In whole or in part, directly or indirectly, the legal aid societies are bringing about, or have brought about, the establishment of model municipal courts; the abolition of the "jack-rabbit practices" of many of the justice courts of the West; the prevention of foreigners from being kidnapped and forced to work on the oyster boats off the coast of Maryland; the regulation of loan agencies and the assignment of wages, especially the

provision that such an assignment must have the signature of the wife, as well as the written acceptance of the employer of the workmen; the organization of credit unions and remedial loan associations; the protection of the sailor against the crimp; the founding of chattel mortgage societies and personal loan associations; the various blue sky laws; and much other legislation, impossible of enumeration here, and of the greatest benefit to the people of the United States, to rich and poor alike, allaying social resentment and suspicion, and preparing the way for the better time that is surely coming for the nations of the world.

Sycophants

By *ARTHUR M. HARRIS*

Of the Seattle Bar

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[Mr. Harris is the author of "Letters to a Young Lawyer," first published in the columns of the American Law School Review and in the West Publishing Company Docket, and later in book form.]

NICHOLAS QUIMBY was an old man; and of a person in his circumstances that is about the most tragic thing you can say. Pitiably, too, he was not the kind of old lawyer who makes an annual European tour, pursued by an insistent, but profitable, flutter of cablegrams; rather, he was of those who busy themselves in a couple of small, obscure offices, where the accumulation of old brown books, old black record boxes, and a squeaking typewriter desk leave little space for the animate occupants of the room to turn around.

Quimby was one of the last of the old-time gentlemen-lawyers, a few of

them still linger in the London Inns and in out-of-the-way corners of the cities of America; men, for the most part, who inherited the professional practices of their forbears, receiving of them, not only the clientele, but the traditions of integrity and character which were the strong foundations of their fathers' labors.

Theirs was the era before the practice of the law became a highly systematized commercial business—a matter of money merely, a relentless pursuit of dollars and cents in ignoble competition with the butcher, the baker, and candlestick maker. Perhaps the new way is the

better one; at least, Nicholas Quimby, an unconscious pragmatist, assumed that that which works is true; at any rate, he could not bring himself to associate anything base with the law. Too simply reverent of the legal system, which he sought to understand with something like fullness, he would not admit any man could debase the law; on the contrary, he thought every lawyer must of necessity be high-minded. There are a few Nicholas Quimbys in all professions. Such men are not soft-headed or foolish, though their wisdom may not be exactly of the world worldly; generally they have a complete and certain command of the intricacies of their professions. It is just a question of approach, of standpoint; an important difference after all, for it sums up as a matter of character.

Thirty years of practice of the law had left Quimby almost impoverished. He had given more than he had received—a weakness for which he was regarded as “too quixotic” by those of his contemporaries who reversed the beatitude.

It seems hardly polite to even hint at Quimby's poverty, for there is something infinitely delicate in the circumstances of a poor gentleman; the inequality of his appetite for the things of culture and the means of gratification; the continual warfare between the spirit and the flesh; the sensitiveness that is being ever scratched by the barbed finger of Necessity—the thought even of this suffering, as acute as it is unobtrusive, is pain.

You see, Quimby had to compete with Death for his clients—and Death won. The old men who had sought out Quimby's father came almost naturally to the son; naturally and easily, for in the face of Nicholas they discerned his father's austere, intellectual image, and the fa-

ther's character was also the son's. So they brought Nicholas their business while they lived, but their children, steeped with the modernity of the colleges, preferred the offices of classmates who were “up-to-date.” Quimby rather prided himself on never being “up-to-date.” True to this sentiment, he remained in the same old-fashioned building which his father had first chosen, and in the same office as his father, even though the building fell into the possession of palmists, clairvoyants, chiropodists, and all that strange bag and baggage which sweeps into the old, unfashionable office buildings of cheap rental. The very locality itself had long ceased to be anywhere near the fashionable business center of the city.

Quimby just could not bring himself to move. It might have been better for him, and undoubtedly it would have been more profitable, to have occupied more pretentious quarters; but there was sentiment—and Mrs. Quimby—little, sweet-faced, silver-haired Mrs. Quimby, who loved the old office because it happened to have been in there that Nicholas' father had smiled his blessing on them both, one fragrant evening of a long-ago May. I am afraid they both were a little sentimental.

But, sentimental or not, Quimby and his wife were secretively and painfully poor.

Gordon, of the N. Y. & G. F. Ry., worried rather much over the Quimbys' situation. He felt he had a perfect right to worry about the Quimbys, for was it not a belated attack of measles only that had prevented him from standing up as best man for Nicholas thirty-five years since? They had been at school together—Gordon, the pugnacious, aggressive type; Quimby, the incorrigible debater

and man of books; and yet peculiarly attached friends were they, whose mutual kindness was stronger than the sun-dering years.

Many a lawyer goes into the service of a railroad or other considerable corporation only to find that in due course the situation proves itself to be a sort of lethal chamber of initiative; a position absorbing the foundation years of a man's career, with only the compensation of a steady, but insignificant, wage. The sudden loss of such employment makes those men the derelicts of the Bar. But in Gordon a man of emphatic commercial instinct had been spoiled in the none too brilliant lawyer, yet the commercial side of his character had pushed the man forward from rank to rank, to the position of head counsel and a vice-presidency of the N. Y. & G. F. Company. More of his effective work was done in clubrooms than in court-rooms.

He had thought at one time in later years of offering Nicholas Quimby some sort of position in the headquarter's legal department, a tender, however, which he felt Nicholas might consider rather impertinent in the man who had always followed him. Gordon's kindly thought had devised a happy compromise, which had placed Quimby on the railroad pay roll with an accession rather than a diminution of dignity.

He had shaken his head sorrowfully at the outer appearance of Quimby's building; shaking that grey, baldish head, he had climbed the unswept wooden stairs, and there were almost tears in his eyes when he had stood before the old office door, lettered "Quimby & Porter, Lawyers" (Porter having been a long-since deceased partner of the elder Quimby).

Nicholas had been inwardly agitated

at his old friend's offer. Gordon had said that the N. Y. & G. F. wanted a representative lawyer in Cannerville to attend to emergency legal matters, a point of reference more than anything else, to whom an annual salary of eighteen hundred dollars would be allowed. Gordon had added that he knew Nicholas was pretty busy, but if he cared to pick up this small change it might be worth while, etc., etc. The negotiation was a triumph of subtle diplomacy for Gordon. That gentleman had departed much pleased with his kindly cunning; he did not see the elder lawyer's face sink between two white, thin hands, nor did he hear the broken-voiced "He knows."

Nicholas said to his wife that night at dinner: "Amy, Dan Gordon is after me to be the local representative of the N. Y. & G. F. Ry. Not a bad proposition if I could find the time." Loyally Amy had replied: "Yes, my dear; if you could find time, I have no doubt it might be well for you to consider his offer." With the skilled tactfulness of affection she had accented "find time."

Evidently Nicholas found time to represent the N. Y. & G. F., and just as evidently the work was not irksome, for a long-departed touch of gaiety returned to his manner, certain pronounced and anxious lines rippled away from his forehead, all of which his wife, Amy, saw and rejoiced therefor.

The Cannerville Bar sighed with relief. Old friends of Nicholas secretly, but gleefully, rejoiced when he was taken under Gordon's wing, for Nicholas was cherished, not only as a man, but as a tradition. Nicholas Quimby was the spiritual leader of the Cannerville Bar, the spiritual superior of any man among them, and the intellectual peer of the best. It is uncomfortable to feel that a

tradition should be in straightened circumstances. Some of this feeling of the Bar Quimby sensed, and was both pleased and pained, for he was anxious to maintain the proper dignity of his acknowledged position.

The blessed sense of the security of this small income compensated the unselfish heart of Nicholas for all the soreness of subdued pride. Nobody, not even Amy, knew how providentially Dan Gordon's assistance had come, and more for Amy's sake was Nicholas glad, for the years were sapping his wife's strength. She was sick and failing. Poor Nicholas, his was a heart of too simple religious devotion to see that the doctrine of an active Providence in the business of men admits queer inconsistencies, implying an unaccountable partiality in the counsels of the Great Governor. Yet, perhaps, Nicholas did the wisest thing after all—"I am unworthy, Lord."

There are all kinds of lawyers—there was Nicholas Quimby and there was also Peter Snarely—both in the same city.

Judge Peter Snarely walked heavily into his chambers, feeling beneath the folds of his stiff, black silk gown for the inevitable cigar. Judge Snarely's manner was much preoccupied. At the adjournment of his court a few moments since he had not paused for the usual minute of friendly chat with his friends of the Bar as they gathered together their multifarious documents from the counsel's tables. He seemed neither to see nor hear the throng of spectators, witnesses, and litigants as they stamped noisily from the courtroom, gloomily or gaily rehearsing snatches of testimony accruing to their disadvantage or advantage as the case

may have been. Genial Peter Snarely was certainly in a most unusual mood of mind.

The bailiff held a match to the judge's cigar—and he noticed that the judge's hand trembled a little. The black silk gown was tossed carelessly across the back of a chair.

"Any papers?" asked the judge briefly.

The old bailiff shook his head negatively. Out in the courthouse lobby he had adroitly intercepted the judge's evening newspapers. A poor, futile strategy.

"They're late tonight," growled the judge peevishly. Then he looked sharply at the old veteran's face a moment. "Did you hear—eh—what the—eh—boys were crying in the street this afternoon?" The windows of the courtroom had been open all day to admit the kindly spring air, but the bailiff asserted he had heard nothing, probably truthfully, for the old man generally dozed through the monotony of a warm afternoon's session.

"I could swear the newsboys were crying my name," muttered the judge half aloud. "The 'Mercury' has been getting very fresh lately. That cheap-jack of an editor tries to be a wise guy." A very correct gentleman on the bench, Judge Snarely often soliloquized in slang, especially if a little disturbed.

"Go and get me a paper somewhere, John," the judge directed, and the bailiff stamped reluctantly and rheumatically out, his kindly face seamed with agitation. No one who came into any close contact at all with Judge Snarely could help liking the friendly personality of the man.

As the bailiff opened the courtroom door, Judges Wilson and Corkran enter-

ed, their faces flushing with indignation, in their hands flapped copies of "The Evening Mercury." The old man observed that his errand had been done for him.

"This is a damn shame, Pete," cried Corkran, opening out the newspaper on Snarely's desk with true Celtic vehemence.

"A WORD TO YOU, JUDGE SNARELY."

This was the heading in large black letters of a burning denunciation of the judge; an open, audacious accusation of malfeasance in office; a long glaring recitation of corrupt practices, fortified with names, dates, places, and documents; an accusation and conviction of dishonesty couched in the most boiling adjectives at the editorial command. The article concluded with an impertinent demand for Judge Snarely's resignation.

As the judge read, he bit through his cigar, and a slight perspiration crept out at the top of his forehead.

"Infamous! Infamous!" echoed his fellow judges with indignant unanimity. They were patting Snarely sympathetically on the shoulder. He turned and looked at them gratefully. "Thank you, gentlemen," he said simply.

For fifteen minutes Judge Wilson denounced a "corrupt and malicious press." Judge Corkran was equally eloquent. Judge Snarely said nothing—just nodded his head once in a while and turned his cigar over and over between his teeth. His colleagues were both very good fellows, he thought; but he would much rather have been quite alone just then. As the door closed behind them, he sank into his chair with a heavy, perplexed grunt.

The two judges left the courthouse, agreeing that the whole thing was most damnable, but with adjectives that were of cooling emphasis. As they shook hands at parting, Judge Wilson remarked, "I wonder where they dug up all those names and places."

"I wonder," echoed Corkran.

"Quite convincing, I suppose, to the man in the street," observed Wilson.

"I'm afraid so," agreed Corkran. There was a slight, peculiar pause.

"Of course, he can clear himself," said Wilson.

"Of course he can," agreed Corkran, with a strange lack of heartiness in his voice.

Judge Wilson scanned the evening sky. "He has had some rather strange connections," he remarked slowly. Corkran nodded quietly. A wink perished still-born in the corner of his shrewd eye.

"It is unfortunate for us, in a way," he said resentfully.

"It reflects on the whole bench. A man in his position should be very circumspect."

"Very," echoed Corkran emphatically. They separated with little dubious shakes of the head.

Up in Judge Snarely's chambers the telephone bell vibrated every few minutes with calls from a dozen parts of the city; voices of encouragement, declaring unshaken confidence in Judge Snarely's integrity, indignant denunciations of the "scurrilous 'Mercury.'" The judge felt somewhat gratified—it is nice to know that one has friends in a pinch. It was well for this comfortable frame that he could not see the odd smiles with which most of his callers hung up their receivers at the other end, smiles which

belied their words, and yet which were more honest than the words.

But Nicholas Quimby did not smile. Over the telephone his voice was tremulous with real indignation, there was a suspicious moistening of his kindly, honest eyes when he had finished speaking. To him the newspaper appeared to have committed a most indecent outrage, a most improper proceeding, he thought, even if they had proof absolute of the judge's dishonesty. Had such information actually come to their hands, he argued, it was not for them to spread it unproven on the front page of an edition; rather they should have proceeded to impeachment in the manner provided by law. Their inflammatory diatribes must weaken the dignity of the law, even though they succeeded in dismissing Snarely from the bench.

Scarcely had the judge finished speaking with Quimby when a very alert, intelligent-looking young man entered the chambers. The judge looked up and almost sighed aloud with relief.

"I'm glad you've come, Charlie," he said smilingly, creasing the young man's hand in his own spongy palm; "it is a rotten piece of business." He nodded at the newspaper, still outspread upon his desk. His manner towards the brisk young man was mixed of ingratiating pleasantness and patronizing kindness.

This was Charles Ebbstein. There is an Ebbstein or two at every Bar. Always they are the most successful of the younger lawyers. They are never newcomers in their cities, but are the children of old families, so that their roots are deep and secure in the community; also there is invariably "some money in the family," and, what is just as important, the family has invaluable connections and influence, assets which

the Charlies use to advantage in promoting their practices.

These young gentlemen lay the foundations of their educations in the local schools, but the big colleges of the Eastern states afford them their professional preparation. From these elegant academies the young men return to their communities with a fairly good outline of the law and a pronouncedly effective knowledge of social and political strategy.

Ebbstein took a seat and one of the judge's cigars. He had adroitly managed the details of the campaign which had placed Judge Snarely on the bench of the district court a couple of years before—adroitly and successfully; consequently his intercourse with the judge was easy and unconstrained.

He crossed his well-tailored legs delicately and agreed that "the 'Mercury' was a 'rotter,'"—a rare piece of slang imported by his Alma Mater from the cultured gutters of London.

"Where d'you suppose they dug up all the da—all the—eh—lying data they've set out here?" inquired Snarely, tapping the newspaper with his eyeglasses.

Ebbstein smiled shadowily.

"Black, I daresay," he answered; "that rough-neck Black. He never forgave you for that decision in the N. Y. & G. F. Ry. damage case."

"Huh! Didn't the Supreme Court sustain me? Isn't that enough for any one?"

The younger lawyer flecked a pyramid of grey ash from his cigar. "Not for Black, evidently," he replied briskly. "He's into everything and knows everything. He'll get his some day all right, all right."

"It's a bad time for this business to have come up—a bad time."

Ebbstein sadly agreed. "Pretty foxy of the 'Mercury' bunch to spring it all just when the legislature is in session."

Judge Snarely grunted. "If they think they can get the legislature to start impeachment proceedings against me—ME—why they've got another guess coming."

"Sure," assented Ebbstein amiably; "it's dangerous, though, and that fellow Black is already up at the capital nosing around, they tell me. I believe the 'Mercury' is staking him, for the only thing he could draw in a bank is his breath."

"He's a damned anarchist," shouted the judge, bringing his clenched fist down sharply on the table.

Thereafter ensued a very secret and particular conversation, with voices dropping almost to superfluous whispers; so private and particular, indeed, was this conversation that they would no doubt have whispered it out had they been the sole occupants of a desert island.

They met again that evening at the Riverfall Club, Cannerville's most select social organization. The judge and Ebbstein were joined in a quiet side room by "old man" Craik of the Cannerville "Bugle." A very conservative old gentleman was this latter person, who published and edited a very conservative "organ"—a conservatism as defined by old man Craik's practice, which consisted in fostering "established institutions," whether the said "institutions" happened to be the glorious flag of a glorious republic, or Cannerville's most inglorious mart of human flesh. Craik asked for nothing more than the continued establishment of all the queer institutions under which he had become rich. Outwardly, he was a man of

grave, reserved appearance, slow of speech, and of an unfailing politeness—a deceptive exterior, which had been, perhaps, his most valuable asset.

"We must create a wholesome public sentiment, Judge, in your favor to offset the effect of this 'Mercury' outburst," Craik remarked, with a slight emphasis on the word "wholesome." He was something of a diplomat.

Judge Snarely looked his gratitude. It will be noticed that nobody had yet asked the judge point-blank whether the 'Mercury's' accusations were true. The presumption of innocence, perhaps, for the man in office, was very potent.

During their chatter the solemn, shrewd face of Thomas Sharp, Esq., president of the Cannerville Bar Association, peeped through the doorway. Mr. Sharp had just come from the club's resourceful buffet, where he had acquired a kindly feeling for all men, a slightly uncertain step, and watery, wavering pair of eyes.

"A council of war—eh—eh?" he grinned amiably, with the frankness of an inebriate. He labored to steady himself as he made for a seat beside Craik at the round table. A bustle of waiters with liquors for all followed his advent. Snarely and his friends had not been ascetically abstemious; consequently the new liquid reinforcements inspired each tongue with something of jovial carelessness.

Mr. Sharp poised before his eyes a slender green, glowing glass. "Snare—Snarely, you won't resign, will you?" There was almost entreaty in his voice.

"Quit under fire, like a dog, eh?" said Craik, somewhat thickly; "I guess Snarely won't."

Charlie Ebbstein nodded emphatic con-

currence over his pousse-café. For a young man he could stand quite a supply of ardent liquors.

"Me resign?" echoed Snarely, "Me?" The very question was its answer. Sharp took the judge's hand in a prolonged and admiring squeeze. He suddenly became voluble with the worst obscenities of the gutter, spluttering his fury at the "Mercury." He was not naturally a coarse individual, but physicians tell us that the untutored virgin in the delirium of a fever will often astonish her parents with the profane vocabulary of a teamster.

"The Bar is with you to a man—to a man—man, every damn man of them, Snarely," shouted Sharp, emphasizing each word with a wise wag of the head.

"That is, all except Black," corrected Ebbstein, slyly.

"The Bla—a-ck sheep, he—he—bah—bah—bah; have you any wool," Sharp grinned fatuously. "Pretty good, eh, the Bl—a—ck sheep of the honorable, honorable, O, most honorable Cannerville Bar 'Sociation."

"The Association will no doubt officially indorse, eh, Judge Snarely," suggested Craik.

"Most cert'ny the 'Sociation will indorse the judge, mos' cert'ny. We can do anything with the 'Sociation, can't we Ebbstein, eh, can't we?"

"You have a great deal of influence with the Bar Association, Mr. Sharp," replied the young man politely.

"I should ra-ther say I have," boasted Sharp. "They're the prettiest little bunch of sycophants you could find in seven states."

"Eh, what? what?" snapped Snarely, resentfully. Craik grinned into his glass with quiet amusement. It was very entertaining. He caught Ebbstein's eye;

as the two most sober men in the room they exchanged quick winks.

"No 'fense, Judge, I assure you," apologized Sharp; "but did y'ever see a Bar 'Sociation that wasn't—eh—amenable to—ah—persuasion; you know what I mean? Go at 'em right, an' you can do anything with the average 'Sociation—they'll indorse anything or anybody regardless. And by the Stars and Stripes they'll indorse you nex' week, or I'll know why. Shake on it." Judge Snarely swallowed the uncomplimentary frankness.

A negro attendant oozed his way in with a late extra edition of Craik's own "Bugle." Craik glimpsed quickly the staring headlines and deftly tried to sweep the paper beneath the table. Under his breath he damned his zealous night editor.

"Le's see the paper," snapped the president of the Cannerville Bar Association. The four men leaned eagerly over the awful sheet:

"LEGISLATURE TO IMPRACH SNARELY!"

"A senatorial committee was appointed late this afternoon by President Thurlow to investigate certain charges of misconduct in office made against Judge Peter Snarely, of the Cave County District Court. R. A. Black and some other prominent members of the Cannerville Bar have been at the capital for the past week, it is understood, urging the legislature," etc., etc.

Snarely looked reproachfully at Craik, and a single big, maudlin tear coursed the length of his nose and dropped with a splash on the damning newspaper.

Craik whispered to Ebbstein: "Call his machine and send him home. He's awful drunk."

The morning newspapers confirmed the report from the state capital that a committee of three state senators had been appointed from the Judicial Committee to sit in Cannerville and inquire

into the charges of malfeasance in office preferred against Judge Snarely. Already the papers were beginning to hum with partisan bitterness. On the one hand the "Mercury" maintained its aggressive attitude of accusation; on the other, the "Bugle," under the adroit editorship of Craik, labored in half a dozen daily columns to vindicate the judge. It is true that Craik was not directly indebted to Judge Snarely; but it seems that there were certain strings on Craik and certain strings on Snarely which were gathered up in one invisible, but authoritative, fist.

When one read the "Mercury," he wondered how so confirmed a grafter could ever have wormed his way to the bench; a reading of the "Bugle" brought tears of gratitude to the citizen's eye for the peculiarly just and upright judge who was Justice's true vicegerent in Cave County—a man, indeed, of so transparent honesty, impartial temperament, analytical mind that his like was not to be found on any other bench in the United States.

The Senatorial Committee resolved to peruse neither the "Mercury" nor the "Bugle."

Particularly, these were busy days for Charlie Ebbstein. Where two or three lawyers were gathered together, either in the lobbies of the courthouse or on the curbs of the street, there was Ebbstein in the midst of them, alert and diplomatic, sounding the general sentiment among the lawyers, and cunningly doing all that he could to promote a favorable feeling for the accused judge. It was the creation of Craik's "wholesome public sentiment."

It was Ebbstein whose activity filled the "Bugle" with indorsements of Judge Snarely from a dozen different organiza-

tions. After fifteen minutes of Ebbstein's eloquence, the Royal Order of Quarrymen unanimously resolved that Judge Snarely was the greatest man America had ever seen, excepting specially Washington and Lincoln. Ebbstein was content to accept third place for the judge.

The exclusive "Women's Club" was skillfully persuaded by this pleasing young man that Judge Snarely was a much-wronged gentleman, and so they said in twenty cultured paragraphs of "Whereases."

One quick word to uncultured Al McCarthy brought laudatory inscriptions from every employé of Cave County—including Snarely's fellows on the bench.

Indorsing the fitness and ability of Judge Snarely became the temporary insanity of Cave County.

Sharp sober was very different from Sharp drunk. That gentleman was busily arranging a full meeting of the Cannersville Bar Association, to be held during the ensuing week and for the one avowed purpose of furnishing Judge Snarely the most flattering testimonial it was in the power of his professional brothers to offer. Such an indorsement, it was perfectly obvious, would carry a great deal of weight with the whole state. The list of speakers for that evening was chosen with the utmost carefulness by Sharp and his Committee on Speakers. Among the names were those of ex-United States senators, ex-congressmen, ex-judges—the whole social and professional power of the Bar. Sharp hardly had to ask for their services on that evening; they seemed moved by a general motive to shield the unfortunate judge—not from personal affection for Snarely, not, it is regrettable to say, from any overwhelming convic-

tion of his innocence, but from motives which moved deep down in their own personal interests.

And yet more effective than all these high ones put together, Sharp and his committee agreed that a speech from old Nicholas Quimby in favor of the judge would be the most effective rebuttal of Sharp's enemies; for the whole state knew Quimby, and knew that there was one thing unquestionable about this man—Character.

Sharp found his way to Quimby's dingy little offices, screwing up his nose at the musty smells of the old building. What a Quixote this Quimby was, to be sure. He found Quimby a ready sympathizer with the judge's trying position. Sharp had never known the old man's benevolent features to express so much indignation.

"The city has a most unscrupulous press," Nicholas said emphatically.

"Yes," agreed Sharp, "that wretched rag of a 'Mercury' is a disgrace to any community."

"Its conduct in this matter has been disgraceful," continued Nicholas warmly, "equally disgraceful as the present attitude of the 'Bugle.'"

Sharp thought he had not understood. "Eh—what? the 'Bugle'—why—"

"Certainly, certainly, Mr. Sharp, I knew you would agree that both our papers are to blame." Sharp thought either he or the old man was losing his reason.

"Both, Mr. Quimby, why I—"

"Ah, yes, yes; you see it the way I do, Mr. Sharp. On the one hand, the 'Mercury,' if it thought it had incriminating evidence against our common friend Snarely, should have offered the same to the proper authorities for judicial investigation rather than proceed to

convict and condemn a man in one blatant column."

Sharp began to feel better.

"On the other hand," pursued Quimby with flashing eye, "the 'Bugle's' conduct is just as reprehensible. A proper, formal, investigation is now being made into these charges, and yet in its zeal for the accused this newspaper is doing all in its power to create an influence which shall bias the judgment of the senatorial committee—a proceeding as ethically improper as the 'Mercury's.'" The old man had to stop and cough for breath. "As lawyers, Mr. Sharp, we know that the rule that the accused's enemies must not seek to improperly influence an impartial judicial tribunal applies also to the accused's friends."

Sharp hastened to agree, and changed the subject to the proposed meeting of the Bar Association. "We owe it to Judge Snarely, you know," he concluded, rather lamely.

Nicholas was silent; there was a troubled look in his fine old eyes. For a moment or two he arranged and rearranged the papers on his desk; then with a decisive gesture he said: "No, Mr. Sharp; you must not include me in your list of speakers. I consider that such an action on the part of the Bar Association would be highly improper. It would be as blameworthy as is the present position of the 'Bugle'; it would be the same unethical attempt to improperly influence a judicial tribunal in the exercise of its duty—precisely the same."

Mr. Sharp wriggled slightly before the direct look of the old man. "You will pardon the unfortunate likeness," Quimby went on; "but it seems to me it would be just the same if the Bar Association should meet and pass resolutions on the innocence of some prisoner

lying in the county jail on a charge of grand larceny. I—" But Sharp had risen hastily. "You will not be at the meeting, then, Mr. Quimby?" he inquired slyly.

"Yes, sir; I shall be there—to oppose your projected resolution of indorsement. To do otherwise would be to play the part of a sycophant."

Sharp wondered where he had heard that word before; then, turning quickly, he was glad to escape.

"Here's a pretty pickle," he confided to Ebbstein; "that self-righteous old quack, Quimby, is going to be the fly in the ointment Friday night. He says"—and he proceeded to recount the disquieting conversation. "Why, say, if he gets talking against our resolution, everything will be spoiled—everything. Snarely might then just as well resign. The old fool carries a lot of weight somehow with people around here."

"He doesn't think Snarely's guilty, does he?" asked Ebbstein.

"No; that's the point. Personally, he believes in Snarely's innocence; but he says he has no right to try to influence the legislative committee with that opinion, outside the record, as you might say. He insists on what he calls 'a proper and ethical attitude of the Bar.'"

"Well, we've got a string on the old man that'll shut his mouth," smiled Ebbstein, reassuringly. "I'll go to headquarters to-day."

Two days later Quimby received a note in Dan Gordon's own handwriting:

"Dear Nick:

"There's a beastly mess over this Snarely matter. You probably don't know it, bless your innocent old heart; but our Company has got to stand by Snarely, simply have to, that's all, for a variety of very good reasons.

"Damn it all, Nick, I wish I didn't have to write this letter; but it's for your good. Somebody's been here from Cannerville and scared our directorate almost to death with

the story that you are going to oppose a Bar Association resolution next Friday indorsing our friend, the judge, and emphasizing the innocence of the said gentleman in the matter of Black's charges.

"If you carry out your threat, Nick, I can't hold your job for you; you won't have any more place on the company's pay roll than a jack rabbit. Nick, we won't let this matter affect our friendship, will we? I'm not trying to persuade you either way, old boy; but I'm just advising you, sub rosa, of the situation.

Daniel Gordon."

It was quite late when Nick left the office that evening; he had sat a long time alone.

His wife met him at home with a beaming, sweet face; she looked better than he had seen her for a long time. There was a delightful hint of girlish excitement in her manner.

"O Nick, dear," she cried, clasping his neck, "what do you think?" Then very breathlessly, "Dear Mrs. Snarely was here to-day and offered us the use of their launch for all of next week. Think of it—that fine launch you admired so much. She said it would help me to get real well, and she just insisted that I take you with me; she said you were working too hard. There'll be the crew to run it, and all we'll have to do will be to honeymoon all over again." Her voice trailed out into a ripple of laughter so sweet and clear that it sounded like the sudden shaking together of little silvery bells.

Long after dinner, as they sat in the fragrant darkness of the porch, Quimby climaxed a long assault of tactful hints, "I—I'm sorry, dear, but let's make some other arrangement. You see—I—eh—I've resigned my position with N. Y. & G. F. people. It is imperative I stay in town next week. But after that we shall have lots of time to be together—lots of time."

She pressed his hand understandingly.

Reform in the Requirements for Admission to the Bar in Wisconsin

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IT HAS BECOME a commonplace to say that we must thoroughly revise the requirements for admission to the bar throughout the United States. Indeed, if one scans the proceedings of the meeting of the Association of American Law Schools as reported in the last number of this Journal, one finds that this subject bulks obtrusively large. "It must be admitted, as leaders of the bar freely do admit, that our failure in America to insist upon adequate general education, legal learning, and sound character as necessary qualifications for admission to the bar have produced their inevitable consequences, narrowness of vision, professional inefficiency, and neglect of ethical considerations, which, despite a majority of able and upright lawyers, have seriously impaired the usefulness, the influence, and the prestige of the bar as a whole" (from the address of President Bates).

Legal educators and thinking lawyers (there are all too many of the opposite kind) generally have come to realize that the question of the standard of admission to the bar has more than a little to do with the general outcry against our law and its administration to-day, and are thoroughly ashamed, not only that we are so far behind all the rest of the civilized world in this matter, but even far behind the medical profession, aye, even behind what are by many considered only pseudo professions or largely business vocations, pharmacy and dentistry. This is all the more disgraceful be-

cause general education, a trained and active mind, and facility of mental processes are much more essential in the practice of law than in these other professions, in which skill, technical efficiency, and even manual dexterity are often a large element in success.

But, in this matter, as in some others, the law schools and law teachers have merited the rebuke so often hurled at theorists that they have not gone much beyond talking and writing. It is passing strange, indeed, that in a country where every self-constituted reformer can get a bill introduced into the law-making body embodying his pet scheme of world reformation, and where as many as 2,000 bills are considered at one session of the legislature of some of the states, and where such sweeping novelties as eugenic marriage laws, mother's pensions, and the like can be passed, we seldom see a bill even introduced to change the requirements for admission to the bar. Why do law teachers content themselves with talking to each other about these things of which they are all convinced?

A year ago the faculty of the College of Law of Marquette University decided to make an effort to introduce and endeavor to have passed in the legislature which was about to convene a measure to raise the requirements in this state. A bill was drawn embodying in the main the very modest requirements suggested by the Section of Legal Education of the American Bar Association as the

fundamentals for reform in this matter. The bill was intentionally drawn to include many details which should be left to administrative regulation by the board of examiners, because the board, in this state, at least, has shown no disposition to make any regulations, not even those thought essential by many lawyers.

The bill provided in its first section that all students must register with the board at the beginning of their course of law study. This is a very necessary check in any state where the system of studying with lawyers is permitted. There are probably few law schools which would issue false certificates of attendance to students, but unfortunately there are many lawyers who regard it as an act of good fellowship to give a young friend a certificate that he has studied a year or more in their office when he has not studied there at all. This thing, of course, becomes cumulative. Such a student, having passed the bar, will always help out others with a similar certificate. The ethical import of the matter is wholly forgotten, and even our small requirements for admission to the bar are constantly circumvented. I have known men to take the bar examination in this state after having studied law less than a year, and in each examination there are a considerable number who have studied law only two years or less—and, unfortunately, many of them pass, too.

Of course, the simplest and the proper way to do away with this and several other evils is by abolishing office study as an acceptable method of study under the law for admission to the bar altogether. It was proposed to insert a provision to this effect in the bill, and the first draft contained such a provision. One would think that there could hardly be any disagreement among lawyers as

to the extreme necessity of adopting this provision soon, in view of the overcrowded condition of the profession with mediocre members; but, strange to say, lawyers are almost uniformly against such a provision. And not only the lawyers of the so-called "old school," but Harvard men and others, men with liberal educations themselves, and graduated from the best schools in the country, oppose it. It was a sad revelation to me.

The absurd reasons urged against all stringent requirements, and especially against the abolition of the venerated stepping stone of the "poor boy" into forensic distinction, office law study, are suitably disposed of by Dean Bates in his presidential address (*American Law School Review*, Nov., 1913, pages 356, 357). It was apparent, however, that this provision must be omitted from the bill if it was to have any possible chance of becoming law.

Another vice, which a proper registration provision would remedy, consists in the practice of many proprietary law schools of receiving students with even less than high school education and endeavoring to cram preparatory work into them at the same time that they are trying to jam them with law. A high school student is usually immature and crude enough, so far as power of logical analysis and synthetic reasoning goes; but the mere thought of taking a boy who does not know his R.'s thoroughly and try to teach him law is a shock to the sensibilities of any teacher. And yet it is done constantly. The fraud and fakery in education is perhaps the worst in the land. The registration provision would at least make certain that the student had the high school education when he commenced the study of law.

The second section of the bill prescribed that applicants must have a pre-

liminary education, consisting at least of a four-year high school course, and that those who could not present regular diplomas of accredited high schools and colleges should be examined by the board as to their preliminary education before being examined upon their knowledge of law. Here, too, the conviction of the framers that it is high time that at least a year or two of college work be required as a preliminary for the study of law had to give way to the general opposition of the legal profession, which was sounded, to such a requirement.

This section was intended to insure the possession of at least the high school education by the applicants. At present the law requires a high school education *or its equivalent*, and the equivalent means anything or nothing. Notwithstanding that boards of medical, dental, and pharmacal examiners have generally adopted the practice of conducting their own examinations into the preliminary education of applicants who do not present a high school diploma, the board of bar examiners in this and some other states does not conduct such examinations, but accepts a certificate of almost any school officer, principal, or county superintendent to the effect that the applicant has the elusive "equivalent" of a high school education.

School men who give these certificates in perhaps the majority of cases regard this as a merely formal requirement, and seldom examine the candidates at all. If the candidate displays a modicum of common sense in conversation, the all-comprehending term, "equivalent of a high school education," serves to pacify the conscience of the school man who gives the certificate. Some very conscientious men have told me as much. And why should they not feel justified in giving the certificate under these conditions,

when the board of examiners in this state, and probably in many others as well, regards this provision of the law as of slight importance, believing and frankly stating that, if the candidate can pass the law examination, he is fit to practice law, whether he has any preliminary education or not.

That the venal have made the giving of certificates matter of exploitation was shown by the case in Chicago of a high school principal who was reported to have sold 5,000 such certificates. The fetich worship of the bar examination is giving us great numbers of slovenly, poorly educated, incompetent lawyers. Every year numbers are admitted to the bar who have not even a high school education, little as that is in this country, as a preparation for a "learned" profession, and some pass the bar examination who are not even proficient in the grammar and orthography of the language. A provision like the one in this bill is an absolute essential to do away with these conditions.

The third section of the bill provided that three years' study of law in the day course and four years in the evening course of a reputable law school, or a four-year clerkship in the office of a reputable practicing attorney, should be necessary to entitle applicants to take the examination, provided that during the clerkship the lawyer tutor must have given regular instruction in the subjects required for examination. If office study is not to be eliminated altogether, surely a longer period should be required than is required of students putting in their whole time in the day course of a good law school.

The same is true of students of evening schools. It is generally recognized to-day that even the three-year law course is too short to give the student the

thorough training in all the fundamental branches which he should have. How absurd, then, to permit men who have devoted only their evenings for a like period and have acquired a smattering of many subjects by a few weeks' instruction in each to take the examination!

Likewise, there is no such thing as law office *study* to-day. Boys work in law offices, performing various functions of office boy, stenographer, collector, etc.; but the old-time student clerkships are extinct. If we are to preserve a venerable institution at all, we should see that its essence is not absent. The lawyer should certify that he has really given the student bona fide instruction.

This section of the bill also required the facts as to the legal education of the candidate to be verified by affidavit of a school officer or the lawyer under whom the candidate studied. It is a pitiable commentary on the ethics of the profession that this is necessary; but false certificates as to law office study are at least as easy to get as were votes during the régime of corrupt politics.

Certificates of schools and lawyers certifying as to correspondence study of law were made unacceptable by this section. There is a crying need for reform here. It is admittedly impossible to acquire a knowledge of law sufficient to practice the profession by correspondence, and yet these schools are by public advertisement and individual contract guaranteeing that any one studying with them can pass the bar examination. I have never yet heard of a person whom these schools refused as a student, whether he had little or no brains and no education of any kind to prepare him for the study of law. I have known credulous young men of small intelligence, who had spent their money and

had acquired the impossible ambition to become lawyers, and who became the hangers-on of the profession and a constant menace to the public. It is a situation which must be dealt with by the law, and the first step is to prevent the use of certificates of study from such schools from being a stepping stone to admission to the bar.

Bar examiners often are wont to look upon the matter with complacency. Where such certificates are not accepted by the board of examiners, these schools have standing arrangements with certain lawyers to give their students false certificates showing that they have served a law clerkship. In any country where the "liberty" to defraud one's fellow men is less sacred than here, the criminal law would have dealt with such a situation. The law schools and bar associations should try to ameliorate the evil by getting the law amended by a provision such as we are discussing.

Many lawyers and bar examiners are too prone to worship the bar examination and believe that it is an all-sufficient test of a man's ability, intelligence, general education, training, legal education, character, etc. Any teacher knows that an examination is but a partial test even of a man's knowledge of a single subject. Besides, as Dean Thayer said in his address at Montreal, the framing of questions for law examinations is very expert work, and requires much study, practice, and skill; and much more is this true of bar examinations covering as many as 27 law subjects.

Even with a board of expert examiners devoting themselves exclusively to this work, we should need all possible safeguards in the way of stringent requirements; and that it is much more necessary under the present practice of having boards composed solely of practi-

tioners is very apparent, when, as Dean Thayer says, the boards have the temerity to publish their examinations. A certain type of student is able to pass bar examinations with little training. I have seen this done often. We must, therefore, carefully inquire into the student's education, in order to be sure of keeping the untrained out of the profession.

The fourth section of the bill provided for the contents of the application, and its principal change consisted in the provision as to the character. The law in this state requires a mere certificate of two lawyers or of a judge as to the character of the applicant. These certificates—at least, those of the lawyers—are given with even less compunction than the certificates of study, and are often based on an acquaintance with the applicant long enough to request the certificate. That this is also a grave problem, and that many men of unsuitable character are being admitted to the bar, there is no doubt.

The bill substituted for the present system of ascertaining character in this state the practice in vogue in some states of requiring a transcript of record of a court showing that two attorneys testified as to the character of the applicant. While this is somewhat less perfunctory than the present method, one must perhaps agree with Mr. Lightner, who discussed this matter before the Section of Legal Education of the American Bar Association (*American Law School Review* for Nov., 1913, page 339), that it is also wholly inadequate. The provision was put in for want of something better. The framers of the bill realized that the solution of this problem demanded further study by the legal world.

The remainder of the bill consisted principally of administrative regulations as to the time, place, and manner of ex-

amination. Most of these should be left to the board to regulate, if there is any reasonable certainty of having an active board, which is anxious to do something more than frame questions and mark papers. But as long as the boards consist exclusively of active practitioners, usually busy lawyers, and very poorly paid for their work as members of the board, one can expect little more.

This bill, therefore, provided for a salaried secretary, who should be a lawyer and should devote his whole time to the work of the board. That this will do much in making the work of the board more effective has been shown in the states where it exists. It is this practice which will be the first step towards more thorough, more adequate, bar examinations, and towards a thorough sifting of candidates for admission to the bar. The ultimate goal must be a board of perhaps three members, devoting their whole time to the work and making of it a life study. When that day comes the boards will take care of all changes that need to be made to give us an honest, efficient, capable, and well-trained bar.

A provision was included providing for two examinations for each candidate, one at the end of his first year of study and the final examination. This is the method in vogue in some European countries and it has the merit of discovering the unfit early and checking them in pursuing study for a career in which they cannot hope for success. It also prevents the taking up of advanced study after negligent preparation in the fundamentals.

As to the constituency of the board, changes were provided, in that members of the faculty of law schools were excluded from membership on the board. In this state the practice of appointing law teachers on the board still prevails.

A member of the faculty of the State University Law School is at present a member of the board. There are many reasons why students should be examined by men who do not know them as students and who are not connected with rival schools.

One of the principal evils which this bill would have abolished is the present practice in this state of admitting graduates of a law school to practice without examination on diploma. The graduates of the Law School of the University of Wisconsin have been since time immemorial admitted on diploma, and still enjoy this special privilege. It has seemed as though there was practically unanimity on this question in the Association of American Law Schools. The American Bar Association had so often, so repeatedly, and so emphatically taken its stand against the practice of admission to the bar on diploma that the committee on standard rules for admission to the bar of the Section of Legal Education, when it printed its standard rules, printed it as a settled proposition, invited no comment on it, but said it was settled "beyond the domain of present-day argument."

Yet it was this provision of the bill upon which it was wrecked. The University of Wisconsin mustered all its forces in defense of its vicious privilege, and by the tremendous influence which it has and through the blind allegiance of many of its alumni (especially the younger men in the legislature—it was a refreshing sign that many of the older graduates did not support their University in its wrong stand) it was able to defeat the bill. Here was the strange and ludicrous spectacle of two schools, both members of the Association of American Law Schools, appearing be-

fore the legislature and fighting each other upon matters upon which the law schools should stand united and upon which they should make united efforts to secure their enactment into law. Verily, there seems to be room for some proselyting within the Association of American Law Schools when one of its old and prominent members bends all its efforts towards defeating legislation which would establish higher standards. It seems true, as Dean Thayer said at Montreal, that "high standards is a comfortable *phrase*." Surely the champions of high standards ought at least to be at one as to the most fundamental reforms, and this has always been considered a most fundamental reform.

One of the members of the faculty of the University of Wisconsin Law School said at Montreal: "For several years the Association of American Law Schools and the Section of Legal Education have been discussing the proper standard for admission to the bar, and they have agreed at every one of the meetings that the standards are too low and that they should be materially raised. The difficulty of that, however, particularly in those states where the standard is set by the legislature in the form of statutes or in the constitution, as in Indiana, is this: The members of the legislature who belong to the legal profession have very little to do with the American Bar Association or the Association of American Law Schools, and what we say here and what we resolve makes very little impression, by the mere fact that we say it or that we resolve it, upon the judiciary committees of the legislatures when they are considering bills to raise the standard for admission to the bar. So the first suggestion I have to make is that the members of the American Bar

Association need to work with the bar generally to instill a sentiment in regard to this matter."

We of Marquette have learned that there is some work still to be done within the Associations mentioned before we go before the public and the legislatures and get ourselves laughed at for giving a Punch and Judy show.

There is not space here to reiterate the arguments against the diploma privilege, and that it would be needless to do so was shown by the splendid indorsements of the bill, and especially of the abolition of the privilege, received from the great majority of the schools in the Association, as well as from many prominent legal educators, bar examiners, etc., individually. It is a pity that these cannot be published here in extenso, because they contained much that was instructive and valuable as to the experience in various jurisdictions. They were an inspiration to us.

The universal practice of European countries, especially of Germany, which is infinitely ahead of us in the training and education of its lawyers, in abandoning admission on diploma and requiring state examinations, not only in law, but in all the professions, even though the ideal conditions for admission on diploma exist—that is, all universities and professional schools are state institutions, supervised by administrative officers, outside of their faculties, in the ministry of education, and the curricula and entrance requirements are uniform—has foreclosed all argument on the subject, especially in a country with 48 jurisdictions of varying requirements, and several hundred law schools of still more varying requirements and attainments. Besides, the states which have made any considerable progress in professional education have all abandoned

it, and would not return to it under any condition.

The University of Wisconsin Law School advanced only one serious argument in favor of its retention of the privilege; that it would lose students if the privilege were abolished! The powerful protective tariff lobby does not seem to hold in its bosom all the self-interest which we learned about in our elementary courses in economics. The ethics of a great university, which has won recognition far and wide for its sincere efforts to achieve democratic reforms and promote the best interests of the mass of the people, would bear investigation in this matter.

It would seem that, if we are to have reforms in the requirements for admission to the bar, they must largely get their impetus from the law schools, as Chief Justice Winslow said to the Section of Legal Education a year ago. An association like the Association of American Law Schools, comprising all the principal law schools in the United States, should have a definite programme on such a subject, and should then put itself behind any movement to enact it into law in any state. The Association was asked for assistance in obtaining the passage of this bill, but not a jot was done. The presence of a few men who could speak officially for the Association before a legislature would exert a great influence. Would not a little of this simple, practical work be just as valuable as a great deal of the "Zukunftsmusik" about the ultimate function of the law teacher, the ultimate evolution of the law course, etc., etc., which is heard at the meetings?

The Section of Legal Education of the American Bar Association was found much more ready to help. It sent its pamphlets for all the members of the leg-

islature, and some of its committee members were ready to come a long distance to appear before the legislature, if sufficient time had been given for the hearings.

Thus a bill which would have meant a great improvement over present conditions in this state, and which had the hearty, and in many cases enthusiastic, approval of such leaders in legal education as Deans Wigmore, Irvine, Hogate, Thayer, Bates, Adams, Harker, Fleming, Wm. Draper Lewis, Manly, Henry

Wade Rogers, C. N. Gregory, Harlan F. Stone, Professors Beale, Hepburn, Williston, Freund, and Goddard, Hon. Walter George Smith, Hon. G. W. Wall, Lucien Hugh Alexander, Hon. Wesley W. Hyde, Hon. Franklin M. Danaher, Hon. J. G. Jenkins, and many others, was defeated by one school, itself a prominent member of an Association formed to achieve "higher standards." If our work shall contribute in some slight degree towards making such a thing impossible in the future, we shall feel well repaid.

Law School Instruction in Practice

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I ASSUME that it is the settled policy of most of the large schools of law to teach Practice. At one time law school teachers differed as to whether they should teach Practice at all; subsequently they differed as to the scope of the instruction; and there is now a marked difference of opinion as to the value of certain methods of instruction.

Opinions have been expressed with more or less vigor on the value of the result of law school instruction in pleading and practice. Some, and these are usually practicing lawyers, charge the schools with absolute failure; others, and these are usually law school professors, consider that the law schools turn out men who are well trained for practice. They are probably both wrong. This difference of opinion is a late echo of the cries of the opponents and defenders of the case system of instruction.

Some law school men have even gone so far as to maintain that in some respects the instruction in Practice in the

law school is even more valuable than that in the office, because it teaches the student matters of practice which he might otherwise rarely, if ever, have to consider in his office. However, if the lawyer rarely, if ever, has to consider a particular problem in practice, the mere fact that he had at one time during his student days been obliged to consider it does not seem to me to be very important.

THE LAW OFFICE AS AN ADJUNCT

Assuming that Practice is to be taught at the law school, shall the school instruction be made self-sufficient, or shall the law office be used as an adjunct? In the Eighteenth Annual Report of the Pennsylvania Bar Association for 1912, page 87, we may read the answer of the state of Pennsylvania to this question. A tabulated list of the students registered from each county and the manner in which they are pursuing their studies shows that there are 486 law office stu-

dents, 602 law school students, 237 students in both office and school, and 18 whose manner of study is not stated.

The current opinion of law school teachers has set strongly against office apprenticeship during the school period. It is generally condemned as wasteful of the student's time, distracting him in the regular and exacting work of the study of substantive law, and, by laying undue stress on matters of mere routine and detail, developing a certain contempt for the more exacting work in the substantive law courses.

The opinion of many learned and able lawyers and judges is to the effect that the law school, in its effort to train legal analysts, may overlook the fact that most of them are to become practicing lawyers, who should know, not only the why, but also the how. They strongly favor the combination of law school and law office instruction. Even some of those who are opposed to the use of the office as an adjunct to the school believe that the student is losing something by being deprived of the peculiar advantage that the law office training gives, and this belief has led to the suggested expedient of requiring some law office apprenticeship, either before or after the regular school curriculum.

The Committee of the American Bar Association has recommended that "no student candidate shall be eligible for admission to the bar until he shall have devoted four years in preparing for call to the bar, either by service of a four years' clerkship in an approved law office or three full years in an approved law school, followed by one year of clerkship in an approved law office; provided, however, that the fourth year may be passed in an approved law school in post-graduate work, including procedure and practice." The New York Board of Ex-

aminers, the New York County Lawyers' Association, and the law schools of New York are in favor of this provision.

It may be that this subject has received keener attention in New York and other code states by reason of the difficulties of practice under that system. I am not aware of any such recommendation by the Pennsylvania Bar Association or of our State Board of Law Examiners. There are some who think that the law office clerkship should precede the law school instruction; that a knowledge of the art should precede study of the science. I am not prepared to discuss this problem, but I venture the suggestion that practically it would be very difficult for a boy to secure apprenticeship in an office if it were known that at the end of his year he would leave to go to a law school for three years.

Under the European and Canadian systems a long apprenticeship subsequent to the law school course and prior to admission to the bar is required. No doubt the German system, which, after a University course of three years, requires the student to spend one year in the public administration service, one and one-half years in practice in the lower courts, and six months in the higher courts, will develop a virtuosity in practice that our system cannot hope to attain.

In Canada, students, before being admitted to practice, are obliged to spend some years as regular clerks in a solicitor's office. I am informed by Principal Hoyles of the Law School in Toronto that in his opinion the school is a good deal hampered by reason of the fact that the students have to spend so much of their time in solicitors' offices, where they are expected to get a practical knowledge of practice. The condition of the modern solicitor's business in Canada is now of such a character that the stu-

dent cannot acquire the proper knowledge of practice, and the Toronto Law School is attempting to make up for this deficiency by lectures in practical work, and by requiring the students to prepare pleadings and other papers and present them to the instructors for criticism and correction.

I had thought it possible to suggest a compromise by requiring a temporary apprenticeship during the summer months between the first and second and the second and third years; but the practical difficulties seem to make it impossible of adoption. If we had only a few students, they might be placed in the offices of friends and alumni of the University Law School; but the large classes make this practically impossible.

The suggestion of the Committee of the American Bar Association above cited, requiring four years' preparation for call to the bar, the fourth year to be passed in postgraduate work, as well as procedure and practice, appeals to me very strongly. A fourth year of undergraduate work, offering courses in the history of law, the philosophy of law, international law, the law of Continental Europe, Roman Law, and comparative jurisprudence, coupled with a thorough course in practice, would seem to me to be an ideal combination of study of the science of the law with its mechanism.

THE PRACTICE CURRICULUM—REQUIRED OR ELECTIVE

The present arrangement of the curriculum in most schools is satisfactory, in that it throws the bulk of the practice work into the third year. The students usually have a course in civil procedure during the first and second years, evidence during the second year, and the balance of the practice work—i. e., criminal procedure, equity pleading and prac-

tice, and practice at law—in the third year. If we had a fourth year, much of the time given up to this practice course in the third year could be used for substantive law studies.

It will make little difference whether the practice course is required or elective, as I believe that the great majority of students will elect it if it is not required. Courses in practice are everywhere popular with the students. The study of problems in practice and the performance of the work that is usually required in connection with such study is a relief from the strain of study required in the analysis of cases in substantive law. The results of the practice course are definite, even precise. This likewise makes the course attractive, as compared with the results of study in substantive law, where they often cannot see the forest for the trees.

THE SCOPE OF THE PRACTICE COURSE AT PENNSYLVANIA

In considering this subject I have in mind only the course in Practice at Law. Turning to the question of what can be taught in the practice course, the subject-matter may be grouped under nine heads; something of all of them and much of some of them should be taught.

A. The theory and science of practice and procedure.

B. The preparation of papers in litigation.

C. Inspection of courts and court offices and reports thereon.

D. The preparation of non-contentious papers.

E. Office management.

F. Use of law books and the modern law library.

G. Brief making.

H. The actual conduct of a trial.

I. Constructive work in practical legislative problems.

A. The Theory and Science of Practice and Procedure.—This is the most important part of the course, and consists of the study of cases, statutes, rules of court, and text-books of practice. During the past year it occupied two hours a week with the entire class and one hour in the seminar, for which purpose the class was divided into five (subsequently four) sections. To indicate the scope of this work, I append a synopsis of the subject-matter covered during the year (see Appendix A). This part of the course is designed, as will be seen from Appendix A, to cover the whole field of practice and procedure at law.

In the trial practice course the question arises whether the study shall be limited to the practice of any particular jurisdiction. Professor Sunderland, in his book on Trial Practice, and Professor Lloyd, in his Cases on Civil Procedure, use cases from many different jurisdictions. Professor Hinton, of the University of Missouri, is likewise in favor of this method.

It is said the principles of practice are universal, varying only in detail and in petty rules, and by using practice cases from other states the student is not only given a broader idea of the general principles, but is also taught to consider the practice of the law comparatively, and that such a course may influence him to take part in the larger work of improving judicial procedure, and may cure to some extent the natural provincialism of the ordinary lawyer who is confined to his local practice work.

There is much reason in this argument, and in the first and second year's work in Civil Procedure, which is intended to treat the subject historically and form a scientific basis for the study

of local practice, this method should be used. But in the third year practice work a different end requires different means.

Practice is a definite and very exacting method of doing things according to existing rules. It seems to me, therefore, that third year practice should be taught according to the method in vogue in some particular jurisdiction. I doubt very much whether it is possible to do any comparative work in the regular practice course. The ground to be covered is so great that it is absolutely impossible to adequately cover the practice work of our own state. I am unable at present to see my way out of the dilemma of either making the third year practice course abortive, by confining it to a few topics or eliminating all references to practice in other jurisdictions, in order to cover as much ground as possible in the details of Pennsylvania practice. I am glad to be able to cite the authority of Dean Hall and Professor Redfield and Professor Higgins to the same effect.

A word about the seminar: The division of the class into small groups for the more detailed consideration of the subject-matter taken up with the class as a whole and the preparation and examination of papers, has proven satisfactory and will be continued. In the seminar much of the work that is ordinarily conducted in the practice courts can be done. Papers in litigated matters may be presented, examined, criticised, reports on court procedure and on the ministerial and executive offices attached to the courts may be received from the students and made the subject of discussion, and much of the detail of procedure and practice, office experience, etc., may be there considered and elucidated.

The study of legal periodicals, of such publications as trial lists, court calendars,

legal advertisements, and notices may there be taken up. As an important addendum to a practice course, I have under advisement the desirability of a method of assigning a student to some particular case actually commenced in our local courts, and requiring him to watch the docket and keep posted on the case, and report from time to time to the seminar section, thus familiarizing him with the actual progress of the litigation.

B. The Preparation of Papers in Litigation.—Pleadings, motions, and orders have a technique of their own, and some instruction should be given in their preparation, not so much for the purpose of testing the student's ability to meet an adversary, as to develop his ability to throw his thought into formal, legal language according to approved standards of expression. I devoted some time during the past scholastic year to this subject. Each student was required to prepare and file thirteen such documents; these were examined and returned to him at the seminar meetings. This branch of the work can be profitably expanded and amplified during the next scholastic year.

C. Inspection of Courts and Court Offices and Reports Thereon.—Students in a law school situate in a city, where the lower and higher courts are almost continuously in session, and where there is a large and able bar, have an opportunity that should not be neglected. Schools located in metropolitan cities should make a part of their curriculum the requirement of attendance at court, inspection of the procedure of the various offices connected with the courts, and reports in writing should be made thereon at stated periods and become the basis of discussion either in class or in seminar. In view of what I shall have to say on the subject of practice courts

hereafter, and the relation of the law school to the subject of actually attempting to teach how to conduct a trial, this subject becomes especially important. During the past year I made a beginning, and hope to develop this work more effectively during the coming year.

D. The Preparation of Non-Contentious Papers.—This should be required in connection with the respective substantive law courses; for example, the professor lecturing on Associations might well require students to prepare and submit contracts of agency and of partnership and documents relating to corporations and the like. In the several courses of substantive law, the students might be required to prepare documents relating to real estate, bills of sale, declarations of trust, negotiable instruments, bonds, etc.

In anticipation of the criticism that no time should be taken for such purpose from the instruction in substantive law, I venture to reply that the mere examination of such documents in connection with the study of the law relating to them will not take up much time and is illuminating to the students. I am reminded of what one of my associates in the faculty told me about the difficulties of a student who was puzzling over a landlord and tenant case, and whose difficulties disappeared when the professor showed him a lease, an instrument which up to that time the student had never seen. In my own experience I have found that the actual handling and examination of writs and other legal documents is of very great value to the student.

Coming back to the thought first expressed, the preparation of non-contentious papers should either be required by the professors in their respective substantive law courses, or there should be

some co-operation between all of them and the professor of Practice, so that the latter might require the preparation of such papers at the time when the former are discussing the law relating to them.

E. Office Management.—The student who has the run of a well-conducted office will soon learn the proper methods of office management. To those students who have no such opportunity some useful information may be given in lectures. I should recommend that a few lectures in an auxiliary course on the proper arrangement of the business of an office, the preparation, docketing, and filing of papers, the conduct of correspondence, the manner of dealing with clients and witnesses and with other attorneys, would be of practical benefit and should be provided for.

F. Use of Law Books and the Modern Law Library.—In some schools this subject and the subject of brief making are receiving considerable attention. I believe that lectures to first year men on law books and their use, a survey of the reports, statutes, and text-books, the use of indexes, digests, and encyclopædias, the modern classification of the subject-matter of the law, and the arrangement of our law library and that of the Law Association, would be of value in teaching the important lesson of knowing where and how to find the law.

G. Brief Making.—I would recommend a few lectures at the beginning of the second year on brief making and the presentation of an oral argument. Model Supreme Court paper books, which can readily be obtained from the clerk of the Supreme Court, might be distributed among the students and used as illustrations for such lectures. The students should also be required to study the rules laid down by the Supreme

Court for the preparation and arrangement of the paper book.

H. The Actual Conduct of a Trial.—Before expressing an opinion on the feasibility of attempting to teach this topic in the school, let me briefly set forth the methods by which it has been attempted.

The Moot Court, largely under the control of the students, is an old institution. In the Moot Court the students try cases before a jury and argue questions of law before a court. The judges are either students of the graduating class or members of the bar or of the faculty. The proceedings are left to the direction of the participants, and are not considered in making up the standing of the students in the school. It is a purely voluntary association, and from the experience of those who participated it may be assumed that the Moot Court did not seriously improve the ability of the young trial lawyer to handle his case in court, though it may have had other pleasant features.

Out of the Moot Court there arose the Practice Court. This is a transformed Moot Court, under faculty control, participation in which is obligatory. No doubt the cases are better prepared, their conduct is more dignified than under the Moot Court system, and the presence and assistance of a member of the faculty makes the Practice Court a useful instrument of instruction.

THE PRACTICE COURT

The Practice Court in its highest development includes all the work of the course in Practice. It is not at all necessary to have a Practice Court to teach any of the subjects hereinbefore mentioned, and unless a school undertakes to teach the *actual conduct of a trial* it needs no Practice Court, unless it chooses to use that name as a convenient des-

ignation for the practice work included under the several heads above considered.

The development of the Practice Court in the law schools of the Middle and Far West may be traced to the influence of the system in vogue at the law school of the University of Michigan. Four different methods have been evolved at the different schools in the preparation and trial of cases:

1. A statement of facts is presented to the students, to be pleaded to joinder of issue. Actual trial is omitted, but student counsel are required to prepare a special verdict or findings and conclusions to be passed on by the court after argument.

2. The statement of facts is prepared from actual cases that have reached the Supreme Court, and after issue joined the testimony, as printed in the Supreme Court paper books, is read, and upon this testimony thus read by counsel from the record, in lieu of the testimony of witnesses, points for charge are handed up, arguments made, and the verdict rendered by the jury.

3. After issue joined, the case is tried by examination and cross-examination of witnesses. A certain number of witnesses is allowed to each side, and, limited only by the broad outlines of the statement of facts given out by the professor, the counsel students may prepare testimony and use their witnesses ad libitum; each side knowing only its own evidence as in an actual case.

4. The preparation of the witnesses for the trial is conducted under the direction of the professor in charge; in so far as the transactions to which the witnesses are to testify can be actually enacted, they are so enacted in the presence of counsel for both parties and of the professor in charge. In order that the perfect balance of the case as prepared by

the professor shall not be disturbed, it is important that he shall be present during the enactment of the transactions, in order that too much or too little may not be said or done, so that the weight of the testimony may not unduly incline to the one side or the other, and thus make the case too easy for the one and too hard for the other.

Barring these differences in the actual trial of a case in the Practice Court, there is, with minor modifications, substantial similarity in the work of these courts. Most of them provide for instruction in the preparation of briefs and of oral arguments, in the method of finding cases, in using law books, in criticism by students of the work done by their associates in the Practice Courts, and in making the entire class in practice participate as jurors and critics in all parts of the work.

The first method eliminates the trial of the case entirely, but devotes the work of the Practice Court to the training in pleading and in argument.

The second method dispenses with the actual trial of the case, and presents the testimony in readings from a printed record of the questions and answers, from which findings of fact and of law are prepared, arguments made, and a verdict rendered. Apart from the fact that the trial of the case in this form gives the attorneys an opportunity twice during their undergraduate life to prepare some findings of fact and conclusions of law immediately after hearing the testimony read, it seems to me that it could be as well done in the library or the seminar as in the Practice Court room. If, as is required in some schools, all of the students are obliged to attend these exercises and participate either as jurors or as auditors, much time would be lost unless the session was converted

into a lecture hour or a seminar discussion.

The third method provides for the preparation of witnesses by the students, limited only by the broad outlines of the case as presented to them in limine. The witnesses are prepared, or rather coached, by counsel, and we have a system familiar to us in the mock trial. The presence of the professor and the fact that a mark is being given for the work no doubt influences the students, and prevents the mock trial thus conducted from degenerating into the farce that entertained us as boys when we held mock trials without such restraining influence. I consider it a serious fault in this method to encourage the preparation, or rather the coaching, of witnesses by the attorneys in the case. They are allowed to develop testimony according to their own fancy to prove the ultimate facts. If this method were applied in an actual trial, it might result in disbarment and indictment. In a mock trial, conducted purely for amusement, such a method may be condoned, for in a farce no one is deceived; but in a trial conducted for instruction, and with the avowed purpose of seriously trying an issue by analogy to methods which are deemed proper at the bar, I consider it a grave fault to invite student counsel to invent testimony and coach their witnesses against a possible cross-examination.

The criticism last above directed against the method of preparing witnesses is inapplicable to the fourth of the methods above described; that is, the method of enacting the transactions to be testified to by the witnesses. This system is defective, in that it is impossible to enact most of the transactions that happen in actual life. I need only mention by way of illustration the great class

of cases of torts. Some facts must be assumed, and the artificial again takes the place of the real. But without doubt the testimony given in cases prepared under this system most nearly approximates the testimony given in an actual case and creates an atmosphere of apparent reality. If trials are to be conducted at all, I should say that the method of preparing for them in vogue at Ann Arbor is the best thus far devised.

SHALL ACTUAL TRIAL OF CASES BE TAUGHT?

A number of experienced men in Eastern law schools and some in Western law schools have expressed very strong doubts as to the desirability of attempting to teach the conduct of jury trials and examination of witnesses in the Practice Court. They have pointed out the essential artificiality that prevails in the mock trial, the absence of real witnesses presenting all the normal varieties of age, sex, occupation, intelligence, and temperament, the absence of the sense of responsibility toward the real client, and the absence of that strongest spur to the practitioner, the fear that he may be doing too much or too little that may vitally affect his client's case. This criticism is applicable only to the actual trial in the Practice Court, and not to any of the steps that precede or follow it; for the preparation of papers, the attack and defense of pleadings, the preparation of briefs, and the conduct of an argument of a case may be quite as real and vigorous in a school as in a real court of law. The preparation is as complete in the one case as in the other.

In the preparation of a statement of claim, the student may consult his authorities; if his statement is attacked and reasons are given, he is enabled to

prepare himself for an argument on the questions raised by the motion or the demurrer. In an argument on questions of law upon an agreed statement of fact, the preparation may be practically the same as in an actual case at law before an appellate court, and the school training given in all of these may be of value, because it develops skill in precisely the same way in which similar work at the bar would. But when we come to the actual trial of a case in court, and compare it with the trial of a case in the Practice Court, the difference is great, and the elements that enter into the controversy are quite dissimilar. Here the analogy of the laboratory, often invoked, fails. The scientist or physician or other technician may use the same material, subject-matter, or method in the laboratory as in actual practice, and the analogy holds in our case up to the point of actual trial of cases only.

I very much admire the skill and persistence of the men who have developed the trial practice court, and I regret that I am unable to fully appreciate the strength of their plea for its value to the student. Assuming that the method followed at Ann Arbor is the best, and really helps the students to translate their knowledge into action, I am, nevertheless, unable to realize that the experience gained in the trial of two or three such cases can be valuable preparation for the actual business of a lawyer at the bar of the court. Furthermore, in view of the great sacrifice of time and money that the experience of the men at Ann Arbor shows must be made to perfect the system, it seems to me difficult to justify it as an administrative measure.

The difficulties that befall the beginner in the trial of a case are not due to his

lack of familiarity with the method, but rather to his lack of confidence in himself. He realizes that he is a mere beginner, and that he has now been placed in the position of responsibility toward a client, and that, to a large extent, the success or failure of his client's case depends on him. The experience gained in trying two cases in a Practice Court, where the testimony has been prepared and there is no responsibility attached to success or failure, except the satisfaction of beating the other side, cannot be considered real preparation for the true responsibility of the attorney in an actual case. Those who assert the contrary ought to assume the burden of proof. I beg to offer evidence of my own personal experience in support of my opinion.

During my senior year as a student of law I remember attending a trial in one of our courts, interesting to me because I happened to know the parties. When advised that the case was about ready for trial, I examined the record in the prothonotary's office, read through all the papers, and then attended court and sat through the trial. I made copious notes of all of its incidents, the questions of evidence raised by objection, the statements made by counsel, the remarks made by the court, the rulings on points for charge, etc. Subsequent to the trial, when the stenographer's transcript of the testimony had been filed, I read through it, comparing it with my notes, and I subsequently attended court to hear argument for a new trial. I can well remember the distinct feeling of elation when, some time afterwards, during my attendance at another trial, I was able to follow and understand much of the procedure from the experience gathered at the first trial. The Moot Court after that seemed to me a very tame affair,

and I much preferred hearing an actual trial in court than participating in the mock trial, except for the fun of it.

I realized then as a student, as I realize now after many years, that the study of an actual trial is much more valuable than participation in a mock trial. The actual trial furnished me with a knowledge of the method of using all of the weapons which legal warfare justified, and I eagerly looked forward to the time when I should have an opportunity to use the knowledge thus acquired. When the opportunity came I did not make the most of it because of stage fright. I passed through the experience that so many young lawyers must pass through before confidence in their ability to handle themselves before the court and jury becomes habitual. Now, although I had experience both in Moot Court trials and the study of trials in court, the confidence in my ability to handle a case did not come until after a considerable experience in actual practice at the bar.

I think it is a fairly well established fact, although we have no statistics to prove it, that young lawyers, fresh from the best offices under the old system of law office training or from the best law schools under the modern system, may be equally deficient in self-confidence. Whether a knowledge of the rules of practice and methods of attack and defense is gained in an office, in a school, or in court is immaterial. The application of that knowledge can only be made in actual trials, and there is no system that we can devise that will enable us to give that experience to students. In cities like Philadelphia, where opportunities for the study of actual trials exist in plenty throughout the year, where good lawyers may be heard and seen daily in the actual conflicts waged before the courts, it seems to me a waste of

time to substitute the mock trial, or even to require participation in the mock trial, along with the study of the actual trial of cases.

But, although we cannot teach confidence and ability to handle a real case, we can and ought to teach how the mechanical part of the lawyer's work should be done most efficiently as a necessary prerequisite to his efficiency as a trial lawyer. This I think can be well done in many ways other than the rather wasteful way of the Practice Court.

Familiarity with the machinery, familiarity with methods of examining and cross-examining, familiarity with the courtroom and its methods, may be well obtained by watching actual trials. The students should be trained in class and in seminar in the study of practice cases; they should be carried through a course of reading covering the entire field of practice. They should have an opportunity to argue questions of law and prepare briefs for this purpose, and should be obliged to attend the courts, visit the court offices, and report thereon. When we have done this in the law school, we have done all that can reasonably and profitably be expected.

After all, we are trying to supply something which was lost when the old apprenticeship to a lawyer's office was given up in place of modern instruction in law school. Now, what was that something which was lost? It was familiarity with actual litigation as conducted by the chief of the office, with the actual preparation of the pleadings and other papers, with the proceedings in court, and all of this familiarity was gained, not by the actual trial of the case by the student, but by his association with a preceptor who permitted him to become familiar with the office work, to copy papers, to run errands, to examine

records, and to sit with him while the case was being tried. No student at law had the opportunity of trying a case in court himself. When we come to analyze the facts, we find that a law school under some course as above outlined can give much the same training as the law office student received.

I. Constructive Work in Practical Legislative Problems.—This, I believe, was first proposed by Dean Lewis, of Pennsylvania, and Dean Wigmore, of the Northwestern University Law School, has included this topic in his curriculum for the second semester of the third year. It seems to me that it is

hardly possible to do anything in this field until we have a fourth undergraduate year.

I should say, therefore, in summing up, that we should limit ourselves to teaching practice through books, lectures, and class work, and should endeavor to familiarize the students, through observation, with the methods actually used in performing a lawyer's work. Everything may be well taught in the law school, except the very important work of trying cases. This, in my judgment, must be left to the student, when as a member of the bar he gains his experience in actual trials.

APPENDIX A

SYNOPSIS OF SUBJECT-MATTER COVERED IN PRACTICE COURSE

At University of Pennsylvania Law School

- (a) During Two Hours per Week with the Entire Class.
 (b) During the Seminar Hours.
 (1) Oral work.
 (2) Written work.
 (3) Reports.

(A) DURING TWO HOURS PER WEEK WITH THE ENTIRE CLASS.

Organization and Jurisdiction of Pennsylvania Courts.

Commencement of Actions of Assumpsit and Trespass.

Summons; Service; Return; Appearance.

Plaintiff's Statement of Claim.

Affidavit of Defense.

Pleas and Notice of Special Matter.

Incidents of Trial.

Trial Lists.

Payment into Court.

Authentication of Records.

Subpœnas and Habeas Corp. ad Test.

Venue; Jury Lists; Calling and Challenging Jury.

Continuance.

Production of Documents.

Depositions, Commissions, and Letters Rogatory.

At Trial.

Voluntary and Compulsory Non-Suit.

Reservation of Points of Law and Judgment N. O. V.

Points for Charge and Charge of Court. Verdict and New Trial.

Judgments.

Entry; Opening; Striking Off; Revival; Lien.

Appeal.

Execution.

The Several Writs of Execution.

Stay; Exemption.

Attachment.

Execution against Personal Property and Real Estate.

Survival and Joinder in Actions of Trespass.

Capias and Warrant of Arrest.

Foreign Attachment.

Attachment under the Act of 1869.

Replevin; Ejectment; Distress; Landlord's Possessory Remedies.

Suing Out Mortgages and Ground Rents.

Practice before Magistrates and Justices of the Peace.

Mandamus and Quo Warranto.

Divorce Procedure.

Mechanics' Liens.

The Study of Legal Education

From the Report of the President of the Carnegie Foundation for the Advancement of Teaching for 1913

THE RESULTS of the inquiry into legal education by the Carnegie Foundation, now actively under way, will, it is hoped, complement the Report upon Medical Education in the United States and Canada, as a similarly thoroughgoing study of one of the higher professions. At the outset one must recognize, however, that the differences between medicine and law are more marked than their resemblances. The one is almost certainly a learned profession; the other, under existing conditions, seems to be now a profession and now a trade, according to the point of view of the individual practitioner. Beyond this somewhat doubtful point of similarity there are wide differences between the two. Corresponding to this difference in the nature of the problem, a different method of study is indicated.

The most fundamental distinction between medicine and law, from the purely educational point of view, would seem to be the different weight attached, in practice, to the possession of an academic diploma, representing, or supposed to represent, a certain degree of professional learning. There is virtually unanimous agreement that a physician must be a "doctor," with the right to attach M. D. to his name; that he must give evidence, in other words, of training in some more or less reputable school of medicine. The presumption is strong that graduates of the better schools possess the qualifications needed for the practice of their profession. The presumption is strong that graduates of inferior

schools, or of no school at all, do not possess these qualifications. The work of state medical boards, in issuing licenses to practice, is thus largely subordinate to the work done by the schools in professional preparation.

In the legal profession, on the other hand, the situation is reversed, at least in the popular estimation. In no state is graduation from a law school a *sine qua non* for admission to practice. The letters LL. B. do not serve to attract clients. Passing a bar examination is the one and only criterion that distinguishes a lawyer from a layman; and to the standards set up by courts or examining boards law schools must therefore to some extent conform, unless they wish—as few of them do—to prepare only legal scholars. While it is doubtless true that law schools and examining boards each react upon the other, and that the existence of good schools permits and encourages the raising of standards of admission to the bar, at the same time that raised standards of admission permit better schools to develop, the latter influence is decidedly the more potent of the two. An inquiry into legal education that failed to include a detailed study of the varying systems of admission to the bars of the several states would promise little of practical value.

There are thus indicated, at the outset, two main divisions for the inquiry. In the first division, which has reference to the methods of admission to the bar, a preliminary survey has already been made of the systems in force, so far as

this can be done by reference to statutes, rules of court, or other published material. Upon the basis of the information thus gained, printed forms have been prepared, and the Union divided into sections of from one to six states, within which individual investigators are now engaged in securing all available information.

The dominating ideas in this branch of the inquiry are two: First, that it is futile to indorse one system as good, and to stigmatize another as bad, unless we can discover how the two systems actually work in practice; second, that published material, by itself, is quite inadequate to the furnishing of this information. Owing to defective systems of records, the task of these field workers is beset with many difficulties; but it is hoped that sufficient can be accomplished to provide a basis for fairly definite conclusions.

For the other main branch of the inquiry—the studying of law schools—a somewhat elaborate question blank has been prepared, and dispatched to all schools in the United States and Canada. The replies to these blanks, combined with the information to be gleaned from a study of catalogues and special bulletins, provide a working basis for classifying the schools; but, as in the case of standards for admission to the bar, all such information is defective unless reinforced by personal inquiry. For the purpose of insuring a unified point of view, it has seemed best to confide this part of the work to a single member of the staff, rather than to several workers. The somewhat exacting office work necessarily involved in an inquiry of this magnitude has made it impossible for him to begin his visits before the current academic year. This part of the

work has now been started, however, and will be prosecuted with such expedition as full justice to the schools will permit.

Supplementary to these two main divisions of the inquiry, I hope to include in the published report a few discussions, by leading authorities, of special topics of particular interest. One such topic is the value of the method of instruction originated by the late Dean Langdell, of Harvard, usually known as the "case system." The reputation secured by the Harvard Law School during Langdell's incumbency, and the eventual introduction of his system, in more or less modified form, into many schools, has created a presumption, which in the minds of many eminent legal educators has been resolved into a certainty, that this system, or one closely approximating it, provides the only proper method of legal instruction. On the other hand, after over forty years' experience of the case system, criticism of it still exists; nor is this criticism by any means confined to those who, being themselves the products of other methods, may be said to be ignorant of its real nature.

The question would still seem to be fairly debatable, and, like the question of the competency of night schools, or of unendowed day schools, to give instruction equal to that provided by the great universities, is a point upon which the Foundation will form no judgment until both sides have been thoroughly canvassed, and relevant facts secured and carefully studied. In special reference to the case system, we have been fortunate in securing the co-operation of Professor Josef Redlich of Vienna, whose monumental work upon the English House of Commons has earned an international reputation. Professor Red-

lich will visit several of the schools whose methods vary most widely, and will give the judgment of an entirely unbiased observer as to the comparative value of their systems.

In order that our inquiry may have its fullest value, it should be conducted with the hearty co-operation of all concerned. Those whom we ask to co-operate with us are entitled to a knowledge of what we are doing, and it is for this reason that I have explained our plans in some detail. In the same spirit I wish to comment upon some of the minor obstacles that confront us.

In the first place, denominational susceptibilities seem in certain cases to have been aroused. Many schools under control of religious bodies have responded to our inquiries with the greatest cordiality and apparent appreciation of our aims. One such school, however, has definitely refused information, on the ground that it is excluded from the benefits of the Foundation. In still other schools, from which no response thus far has been received, it may be conjectured that a similar impression exists, varying from the feeling that the Foundation is interfering in a matter beyond its concern, to the conviction that it is an anti-Christian agency.

Our policy toward all such schools is to endeavor, by personal interviews, to dispel this misunderstanding of our aims. When we are unsuccessful in this endeavor, nothing will remain but to give such description of the school as may be gleaned from its official publications, with the statement that further information has been refused. I cannot but feel, however, that co-operation on the basis of a mutual understanding of each other's ideals would provide a more satisfactory solution of this difficulty, both as

contributing to the greater comprehensiveness of the inquiry, and as aiding the public to realize the work of the many schools which, whether denominational or not, are doing faithful work in secular education.

It ought not to be necessary to restate the Foundation's policy with regard to denominational schools. Schools, the relation of which to an ecclesiastical organization is one of sympathy and tradition, are admitted to its benefits on the same basis as other schools. Several such schools are now on its list. I have suggested that, apart from any supposed financial advantage to be gained by a change of charter, there might be educational advantages in the substitution of this fluid control for the fixed lines of charter restrictions. But I have also most clearly stated my respect for those institutions whose sincerity of purpose leads them to retain formal denominational control. Time has not caused me to change the views I expressed in the First Annual Report:

"Many institutions will prefer to [provide their own system of retiring allowances], however difficult the process may be, rather than accept an educational policy which in the judgment of its faculty is undesirable, or to surrender a connection which ministers to its spiritual and intellectual growth. In all such questions the institution must be the judge of its own best policy."

And again in my Second Annual Report:

"Primarily the college authorities ought to face fairly the question, 'What does our denominational connection mean to us?' If it means a real gain to the spiritual and intellectual life of the college, or if its obligation means the abandonment of obligations assumed in good faith, the inquiry can go no further. No gain in college support can compensate for a loss of college sincerity. Even when these reasons do not exist, the traditions and aspirations of a religious body are so interwoven with the life of certain colleges that those in control may well hesitate to take such a step."

The division of Educational Inquiry has no concern with denominational considerations as such. Its purpose is to study the educational product, whatever be its source. It has no power to extirpate denominational education, even if it had the desire, and would hurt its own reputation far more seriously than that of any school if it distorted facts to prove a preconceived thesis. It asks those denominations which feel that their law schools give instruction equal to or better than that provided by the majority of purely secular schools, to open their doors to an unprejudiced inquirer.

A second mistaken idea with which we may possibly have to contend is a feeling, on the part of some of the smaller schools, that the Foundation attaches too great importance to the possession of financial resources as such, and is not sufficiently sympathetic with those groups of earnest men who are struggling, under conceded difficulties, to realize ideals. This feeling, again, if it exists, is based upon an entire misconception. Other things being equal, all will agree that a school with large resources can provide more comprehensive training than one which is financially embarrassed.

Other things rarely are equal, however, and an overpaid faculty, giving perfunctory instruction in an expensive plant, is at least a possible phenomenon.

The costly laboratories needed by a medical school are not requisite for law. Books seem essential; but even this requirement may sometimes, in large cities, be met by securing access to a state or county collection. In no other branch of professional education, except the ministry, does the individual instructor count for so much, his material equipment for so little, as in the law. We

ask the sincere worker in the smaller schools to recognize that our purpose is far less to expose the occasional imposter, who in the nature of things cannot be expected to respond cordially to our inquiries, than it is to assist good men, in large and small schools alike, to profit by one another's experience.

A word should be said in conclusion as to the relation which this inquiry bears to the legal profession. Legal education is a topic which, in the cross-hatch classification of human activities, belongs within two fields. It is clearly a division of law, and properly to be discussed accordingly by lawyers. With equal clearness it finds its place in the sphere of educational inquiry, and thus demands consideration by any agency which aims to make a comprehensive survey of American education. No such inquiry can be really fruitful, it is true, unless it is conducted with the fullest co-operation on the part of the legal fraternity. This co-operation has been the basis of our inquiry.

The Committee on Legal Education and Admissions to the Bar of the American Bar Association formally invited the Foundation to make this investigation. Those parts of the inquiry which demand technical legal training are being conducted by law school incumbents or by practicing attorneys. Lawyers of national reputation will assist us in deducing pertinent conclusions from the collected facts. This is not, however, primarily an auto-investigation directed by lawyers upon themselves, or by members of law schools upon their own institutions; and in this fact lies, perhaps, its chief promise of usefulness. It is a thoroughly independent survey, conducted by an organization which sees in the

legal profession an extremely important part, but none the less a subordinate part of the American community.

The Foundation possesses no peculiar mandate to represent the community in this matter, nor can its dicta carry greater weight than the arguments by which

they are supported. Such a survey, however, deserves well to be made, and in the absence of other available agency the Foundation has taken up the task. To whatever conclusion our inquiry may lead, I ask that it be regarded as at least conceived in a spirit of public service.

Night Law Schools

By PAUL L. MARTIN, A. M., LL. B.
Dean of Creighton University Law School

TWO OLD ACQUAINTANCES met after the lapse of many years, and fell to discussing the achievements of their friends. Finally one of them said, "What has become of Wilson?" "Well," the other replied, "you know he started out with nothing, and he has held his own ever since." Luckless chap. The fates were against him, as he would say, and he meekly submitted to extinction.

What a pity he did not emulate the example of the Optimistic Frog, which fell into a can of cream with a Pessimistic Frog, and, instead of weakly abandoning hope and drowning with his dreary companion, kept jumping and jumping all through the night until he had churned the cream into butter, and in the morning sat triumphant, though fatigued, beside his completed task. Verily, "Tis late before the brave despair!"

It has been said that there are two kinds of people in this world—the lifters and the leaners. Needless to say, the latter would never patronize a night law school; their evening educational activities generally being confined to the pool

room, bowling alley, or some other place of amusement or dissipation.

But the lifters, the men of heroic mould, who love to grapple with untoward circumstances and wrest victory from defeat, these are the patrons of night schools, and they are a goodly race, full of enthusiasm, industry, perseverance, and that fine courage which scoffs at difficulty and welcomes the fray, confident in the ability to win success and reach the goal of achievement. For them there is no such word as failure; all they ask is an opportunity to show the stuff of which they are made.

It may be that in early life they have been listless, and have let slip the chance to win an education worthy of their talents; but in the clear, cold light of the years they have perceived their mistake, and have heeded the poet's exhortation:

"Nor deem the irrevocable Past,
As wholly wasted, wholly vain,
If, rising on its wrecks at last,
To something nobler we attain."

Or it may be that adverse circumstances have deprived them of the opportunity to round out their education, and they therefore eagerly seize the

chance to study law at night, either with the idea of preparing for practice, better fitting themselves for business, or for the mental discipline which is involved in the rigorous four-year course of the best night schools.

It is sometimes supposed that a night school is necessarily inferior to a day school, and there is a strong prejudice against the former; but this supposition and this prejudice are alike unwarranted. Of course, it is self-evident that men cannot study as much in three years, if they are devoting the major part of their time and energy to a bread-winning occupation, as they could if they were free to devote themselves exclusively to study; hence a three-year night course, purporting to cover as much work as is demanded by high grade three-year day schools is rightly condemned.

But if the three-year day course is spread over a period of four years, the student who spends his days in office or store will find plenty of time and energy to properly master the law. Moreover, experience proves that the night student, with his keener appreciation of the value of time, often surpasses his more fortunate brother who is privileged to attend the day course.

It is well known that in every law school there are many students who earn at least part of their expenses while carrying the regular work, and it is idle to condemn a man as necessarily a poor student merely because he is not free to devote all of his time to study.

Dr. Oliver Wendell Holmes is credited with remarking that certain persons would get up and leave during the course of his public lectures, and that he could never explain this phenomenon, except upon the theory that they had received

a headful. So with students. Their capacity is necessarily limited: after a time their brains "tolerate" further study, as the doctors would say; their faculties tire, and they must have a change. When the mind is surfeited, it is useless to urge it further—it will surely balk.

The study of law is fascinating, and involves a complete change from the humdrum of the work-a-day world; hence the night student, if he is willing to spend four years at the task, may confidently hope to obtain quite as thorough a course as his brother of the day school. This is peculiarly and particularly true when both day and night men are taught by the same professor, who, having gone over the matter with the day men, is in a position to give the night students the benefit of the questions, objections, and suggestions brought out at the morning lecture.

The night school is likewise a boon to the ambitious student, who wishes to take additional preliminary training in a first-class university; for by enrolling in the day classes of the undergraduate department he may supplement his preliminary course, and, if he desires, may qualify for the bachelor's degree, at the same time carrying as much of the night law work as he wishes, until such time as he has satisfied the conditions for an undergraduate degree, when he may devote himself entirely to the law, thus earning two degrees in less time than would otherwise be necessary, and that, too, without sacrificing anything which would make for thoroughness. Should the student wish to supplement his law school course with the training of a lawyer's office, the night school makes it easy for him to do so; for he may spend a considerable part of his day in an office,

or in attendance at the courts, and take his regular instruction with the night classes.

Then, too, it often happens that a person who intends to follow a business career wishes to better fit himself for his work by taking a few law courses along the line of his specialty. This he may do in a first-class night school without interfering with his regular work. Night schools have come to stay, they

supply a real need, and it is idle to point the finger of scorn at them merely because their sessions are held at night. As well condemn a morning newspaper because it is issued at night, or the House of Lords because it holds night sessions. The time of instruction is only an accident; the essential consideration should be the kind of instruction given. The controlling question is not when, but how.

Questions on Legal Bibliography and the Use of Law Books

By R. A. DALY

Special Lecturer in some forty law schools on the subject of "How to Find the Law"

1. Locate a text-book treatment on the humanitarian doctrine, as applied to master and servant in the case of *Davenport v. F. B. Dubach Lumber Co.*, 112 La. 943, 36 So. 812. Explain process.
2. Give the date of the decisions first reported in the following Reports:
 - (a) L. R. A.
 - (b) Am. St. Rep.
3. Give the date of the last decisions reported in the following Reports:
 - (a) Am. Dec.
 - (b) Am. St. Rep.
4. What is the National Reporter System? What period does it cover?
5. Where can you find every published decision from the Federal Courts of the United States, below the United States Supreme Court, prior to 1880?
6. Give the period and class of cases covered by the Federal Reporter.
7. Where else can you find cases reported in C. C. A.?
8. What system of reporting in this country covers every published decision from the courts of last resort of this country for the last twenty-five years?
9. What will give the very latest published decision on a given point, and how is it connected up with other cases on the same point?
10. How can you best locate in the standard reports (National Reporter, State Report, L. R. A., Am. St. Rep., Am. Dec.) every published decision from the courts of last resort in this country, during the nineteenth century?

Questions on Legal Bibliography and the Use of Law Books 457

11. Locate the case of *Middlesex Water Company v. Knappen Whiting Co.*, 49 L. R. A., in other reports.
12. Give title and locate elsewhere the case in 173 Mass. 258. In answering this question, do not consult digests or reports.
13. Locate *In re Reardon*, decided by the Supreme Court of Illinois in 1909.
14. What are the facts in the case of *Longley v. McGeogh*, 86 A. 843? Answer this question without consulting any report.
15. In a very lengthy decision of recent date, covering many points, how can you best locate the exact place in the decision where the court is discussing a specific point?
16. How were the early Reports of this country cited?
17. Give the jurisdiction and full name of the reporter designated by the following abbreviations: Wall., Wheat., Cush., Cushm., Pick., Pickle, Har. & G., Mart. & Y., Hill & D. Supp., and Woodb. & M.
18. What publication best answers questions similar to the immediately foregoing?
19. Correct the citation: 1 Metc. 1.
20. What is the difference between the early editions of the L. R. A. plus "L. R. A. as Authorities" and the "Extra Annotated Edition" of this work?
21. Are you sure of getting later cases on your point by the use of a Citor?
22. By the table of cases "Affirmed, Reversed, and Modified" are you assured that your court has not reversed its holding upon a given point?
23. What will give you cases of "Contra Doctrine," as well as cases "Affirmed, Reversed, and Modified"?
24. "The Law is the last interpretation of the law given by the last judge." How near can "Cyc." give this to you?
25. What will give you the last published "interpretation by the last judge"?
26. How can you locate a judicial definition?
27. What is the "Key-Number"?
28. What is the "Descriptive Word"?
29. Is intoxication, per se, evidence of contributory negligence? Locate authorities by use of Descriptive Word.
30. Exhaust authorities on foregoing question. State process.

NOTE.—Answers to the above questions, prepared by Mr. Daly, will be published in the Spring Issue of the *American Law School Review*. Therefore it might prove a pleasant exercise for students to write out answers to the questions for the purpose of comparison to the answers to be published in the Spring Number of the Review.

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The American Law School Review

An Intercollegiate Law Journal

A. F. MASON, Editor

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SPECIAL LEGAL EDUCATION ISSUE

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A. F. MASON, Editor

Vol. 3

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No. 9

The Movement Towards Higher Standards

THROUGH the courtesy of Mr. Alfred F. Mason, the editor of the American Law School Review, this number of the Review has been intrusted to the editorial control of the Secretary of the Section of Legal Education of the American Bar Association. It will be devoted almost exclusively to the more important results in the movement towards higher professional standards in the practice of the law.

At the St. Paul meeting of the American Bar Association, in 1906, Mr. Lucien H. Alexander, of Pennsylvania, made this suggestion in the meeting of the Section of Legal Education:

"There is great lack of uniformity in the various states with reference to rules of admission. Some states have excellent rules on some points, while on others they are totally deficient in important particulars. Now, it has occurred to me that it might be advisable to have a committee of this Section draft a set of what might be called ideal or standard admission rules, with explanatory notes emphasizing important provisions, and which, when finally approved and adopted, may

eventually be recommended by the American Bar Association as a guide to states desirous of securing the best possible system for admission to the Bar."

The suggestion resulted in the appointment of a committee of seven to draft a set of rules for admission to the Bar, "which, if adopted and approved by this Section, may be regarded as Standard Rules."

As organized in 1907, this Committee consisted of Mr. Lucien H. Alexander, of Pennsylvania, chairman, Mr. Lawrence Maxwell, Jr., of Ohio, Mr. Wesley W. Hyde, of Michigan, Mr. George W. Wall, of Illinois, Mr. Frank Irvine, of New York, Mr. Henry H. Ingersoll, of Tennessee, and Mr. Hollis R. Bailey, of Massachusetts. The membership has remained unchanged since 1907. The Committee has submitted a number of written reports, which, with the discussions evoked by them, will be found in the volumes of the American Bar Association.

tion Reports indicated in the note.¹ The final report will be made at the next meeting of the American Bar Association, to be held in Washington City on October 20, 21, and 22, 1914.

The general result of the Committee's long labors has been not so much the drafting of a set of rules as the definition of the fundamental propositions which, with some modifications here and there, perhaps, should form the basis of a system of rules for admission to the Bar in any state of the Union. These propositions are set forth in the article which follows on "Standards for Admission to the Bar."

This effort to define the standards for admission to the Bar is, however, only one aspect of a larger movement, already apparent in several states. It has found a notable expression in two distinct, yet related, efforts "to restore a conception of the moral duties of a lawyer"—the Canons of Legal Ethics adopted by the American Bar Association in 1908,² and the Questions and Answers published from time to time by the Professional Ethics Committee of the New York County Lawyers' Association. Both these results will be found elsewhere in this number.

An International Conference on Legal Education

IF THE 1915 meeting of the American Bar Association is held in or near San Francisco, an international conference on legal education appears to be among the possibilities. The suggestion, made in a preliminary way to those in charge of the Panama-Pacific International Exposition, has brought a generous promise of active co-operation and assistance in all possible ways.

The aim of such a conference would be to afford an opportunity for the presentation of the ideals and methods which prevail in the existing systems of legal education in the leading nations of the world. However excellent our law schools, they are hardly the last word in a complete system of education for full admission to the Bar. Rather, our system of legal education is still in the

making. It lacks co-ordination. Our law schools and our State Bar Examiners do not as yet work together effectively.

As respects candidates for the Bar, the prevailing American system is loose at both ends. There is too little attention to pre-legal studies; the law graduate is turned loose too soon. It is taken for granted that if a student has finished his four years in the high schools, or his two years of college work, or has obtained his A. B. degree, and has then spent three years, or two years, more in the crowded classrooms of a great law school and won its diploma, he is ready for admission to the Bar as a member in full standing. We require no probation period after graduation, no post-graduate clinical work. It is possible that the law graduate has only the vaguest acquaintance with the law of the

¹ A. B. A. Reports, vol. 33, p. 775 (1908); vol. 34, pp. 742, 768 (1909); vol. 35, pp. 793, 846 (1910); vol. 36, pp. 637, 640 (1911); vol. 37, pp. 718, 813, 818-886 (1912); vol. 38, pp. 739 (1913).

² See A. B. A. Reports, vol. 33, pp. 55-56, 572-586.

state to the Bar of which he is admitted. It is possible that he has never felt the influence of those high ideals of professional conduct which prevail, as the unwritten law of the profession, in our best law offices. There is a passage in Leaming's Philadelphia Lawyer in the London Courts which gives food for thought:

"Any one who has sat on a Bar committee, or on a committee of censors, in America, must have been struck by the frequent instances where practitioners have fallen into error from sheer ignorance, due to inexperience or to the fact that they had not been born and bred to the best traditions. This is especially true in these days when law schools are grinding out members of the Bar who have had no real professional preceptors."

In this, as in other matters, there is much to be gained from a study of the system of legal education which prevails in Germany, or from a study of the French system, or the English. We can gain still more from a comparative study of all three.

The experience of those who attended the 1904 meeting of the American Bar Association at St. Louis tends to show that such a meeting within the exposition grounds of a World's Fair is not apt to be a success. Referring to this objection, Mr. James A. Barr, manager of the Bureau of Conventions of the Panama-Pacific Exposition, has written as follows:

"There is a general disposition on the part of conventions not to hold their sessions within the Exposition Grounds. This has arisen from the experience at St. Louis, where it was found that sessions held within the Exposition limits were unfavorably affected by the diverting attractions of exhibits near at hand. For this reason the Exposition authorities have provided extensively for the

accommodation of conventions apart from the Exposition. In addition to a large number of attractive halls situated at various points throughout the newly built city of San Francisco, they have provided for the erection of a beautiful auditorium, at the civic center of the city, to cost approximately \$1,000,000. This auditorium will be readily accessible from all points in San Francisco, and especially from the locations of the best hotels. In addition to a large assembly hall, this auditorium will include eight or ten smaller convention halls accommodating audiences of from 100 to 2,000.

"If, however, the members of the American Bar Association, and of your Section, should desire to meet still further away from the busy center of San Francisco, we can provide for sessions in the city of Oakland, which is increasing its already abundant facilities for the accommodation of conventions, while the recently completed Hotel Oakland is not second in character and capacity to any hotel in any city East or West. In addition to the above, if desired, it will be possible to arrange for sessions to be held in the city of Berkeley, just beyond Oakland, in connection with the State University, whose excellent halls have been placed at the disposition of such conventions as yours; or it may be possible to arrange for your session in connection with the Leland Stanford, Jr., University, which is not far away. We are practically certain that we can locate your convention where it will not be unfavorably affected by the Exposition, or by the number of people that may be visitors at the city of San Francisco during the Exposition period."

As yet, however, there is nothing definite concerning the 1915 meeting of the American Bar Association. All that is said with reference to an international conference on legal education is merely tentative. On the chance, however, that the question may become a practical one, the Secretary of the Section of Legal Education will be glad to receive any suggestions from the Law Schools, or the Bar Examiners, or others, bearing upon any aspect of the matter.

Standards for Admission to the Bar

By LUCIEN HUGH ALEXANDER

Chairman of the Committee on Standard Rules of the American Bar Association's Section of Legal Education

FOR some years the Section of Legal Education of the American Bar Association has had a committee at work in an effort to gather the best consensus of professional opinion as to the more important provisions which should be incorporated in rules regulating admissions to the Bar, with the ultimate end in view of preparing a set of what may be termed standard rules for admission, rules which shall comprise all that should be included in an adequate admission system, and which, when drafted, may serve as a general guide in jurisdictions in which changes in the rules now in force are being made or are in contemplation.

This committee is composed of Hollis R. Bailey, of the Boston Bar, Chairman of the Massachusetts State Board of Bar Examiners; Wesley W. Hyde, of the Detroit Bar, and a member of the Michigan State Board of Bar Examiners; Henry H. Ingersoll, Dean of the Law School of the University of Tennessee; Frank Irvine, Dean of the Law School of Cornell University; Lawrence Maxwell, of the Cincinnati Bar, formerly Solicitor General of the United States, and long a professor in the Cincinnati Law School; George W. Wall, of the Chicago Bar, Chairman of the Illinois State Board of Bar Examiners; and Lucien Hugh Alexander, of the Philadelphia Bar, Chairman, formerly and for several years a member and secretary, of the Board of Bar Examiners there.

Standard rules in so important a matter can be made of substantial value only through intrinsic merit. It follows that they should be prepared with the greatest care, and only after the fullest possible consultation with those likely to have opinions and suggestions of value, that they may represent the consensus of the best professional judgment of our time.

Early in their deliberations the committee reached the conclusion that a satisfactory completion of the task would more rapidly result if the main points to be incorporated in the rules were first discussed as independent propositions, and until a substantially unanimous agreement should be reached with reference thereto; that in fact the fundamental principles can be better considered and discussed in this form, than if crystallized into concrete rules, for in a draft of the rules as a whole a matter of prime importance may be embodied in a single clause and attract but little attention.

The committee reduced the fundamental propositions to eighteen in number, two of which (A and B, *infra*), owing to the action taken by the American Bar Association in previous years, they considered and still regard as so axiomatic as to be beyond the domain of present-day argument.

These eighteen propositions (the first two designated A and B, and the remainder numbered from I to XVI) are as follows, and are now submitted in the

form last acted upon by the American Bar Association's Section of Legal Education:

A. *Examinations for admission to the Bar should be conducted in each state by a board appointed by the highest Appellate Court.*

B. *A law diploma should not entitle the holder to admission to the Bar without examination by this Board.*

I. *The candidate shall on admission be a citizen of the United States. (For discussion in re this proposition see p. 466, infra.)*

II. *He shall also be a citizen of the state in which he is applying for admission, or prove that it is his intention personally to maintain an office therein for the practice of the law. (For discussion, see p. 467, infra.)*

III. *Character credentials on application for admission shall include the affidavits of three responsible citizens, two of whom shall be members of the Bar, and the affidavits shall set forth how long a time, when, and under what circumstances those making the same have known the candidate. (See p. 467.)*

IV. *The lawyer on admission shall be designated attorney and counsellor, and not merely attorney. (See p. 467.)*

V. *Three years' practice in states having substantially equivalent requirements for admission to the Bar shall be sufficient in the case of lawyers from other jurisdictions applying for admission on grounds of comity. (See p. 467.)*

VI. *There is no necessity for the insertion in the rules of a reciprocal comity provision; that is, of a proviso prohibiting the admission of lawyers from other states on grounds of comity, unless the state from which the lawyer comes*

extends similar courtesies to lawyers from the Bar of the state in which the candidate is applying for admission. (See p. 468.)

VII. *Students shall be officially registered at the commencement of their course of preparation for the Bar, upon report of the State Board as to fitness. The Board's report shall be based upon its inspection of the candidate's credentials establishing that he has passed the required academic examination. The registration shall be with the clerk of the highest Appellate Court. A candidate removing from a jurisdiction having similar standards for registration may have the registration transferred. Nunc pro tunc registration may be permitted according to the present New York practice, which allows such registration only when the candidate had the requisite education at the date as of which he desires to be registered, and in a case where there has been no laches on his part. (See p. 468.)*

VIII. *No candidate shall be registered as a student at law until he shall have passed the entrance examination to the collegiate department of the State University of the candidate's state or of such college as may be approved by the State Board of Law Examiners, or an examination equivalent thereto conducted by authority of the state. (See p. 468.)*

IX. *Proof of moral character shall be required as a prerequisite to registration. (See p. 469.)*

X. *Student candidates for admission to the Bar, in order to be eligible for the examination for admission, shall have studied either in an approved law school or bona fide served a regular clerkship in the office of a practising attorney during the required period of preparation. (See p. 469.)*

XI. *No student candidate shall be eligible for admission to the Bar until he shall have devoted four years in preparing for call to the Bar, either by the service of a four years' clerkship in an approved law office or three full years in an approved law school, followed by one year of clerkship in an approved law office; provided, however, that the fourth year may be passed in an approved law school in post-graduate work, including procedure and practice.* (See p. 473.)

XII. *Candidates for admission shall present themselves prepared for examination in the following subjects: Constitutional law, including the constitutions of the United States and (the candidate's state), equity, the law of real and personal property, evidence, decedents' estates, landlord and tenant, mortgages, contracts, partnership, corporations, crimes, torts, agency, sales, negotiable instruments, domestic relations, common law pleading and practice, federal and state practice, conflict of law, professional ethics, the federal statutes relating to the judiciary and to bankruptcy, and the development in (the candidate's state) of the principles of the law, as exemplified by the decisions of its highest Appellate Court and by statutory enactments.* (See p. 482.)

XIII. *Names of all candidates for admission should be published by the Board for three days in succession, at least ten days before the examination, in a newspaper of general circulation throughout the state, and for four weeks in a law periodical, should there be one within the state jurisdiction. A similar publication should be made of the names of the candidates passed at the examination and at least ten days before the State Board's certificates are issued to the candidates.* (See p. 482.)

XIV. *From the examination fees received the members of the State Board shall receive such compensation as the highest Appellate Court of the state may from time to time by order direct.* (See p. 482.)

XV. *The fee for examination for admission shall be \$25, and for passing upon registration credentials in the matter of general education qualifications, \$5.* (See p. 483.)

XVI. *The State Board shall consist of five members of the Bar, no one of whom shall receive student candidates in his office in preparation for call to the Bar, or be connected with the faculty or governing body of any law school presenting candidates for admission.* (See p. 483.)

A résumé of the apparent status of the best professional judgment upon these propositions will be found in the following pages.

During the meeting of the American Bar Association in Detroit in 1909, all the propositions were before the Section of Legal Education and were extensively debated. See 34 A. B. A. Rep. 742-767. The committee's report for that year will be found in the same volume, pp. 768-774.

In accordance with the instructions of the Section of Legal Education, the committee, during the summer of 1910, caused a reprint to be made of its 1909 report, with annotations to the action of the Section at the 1909 meeting upon the fundamental propositions then submitted, and sent the same, inter alia, to every member of the American Bar Association, to the Chief Justices of the various states, to the members of the various State Boards of Bar Examiners, and to the Deans of all American Law

Schools, with requests for criticisms and suggestions. The committee were favored, although almost overwhelmed, by a number of replies, many of which proved of great value to the committee in its deliberations. These they subdivided, classified, and assembled under appropriate headings, and at the 1911 meeting of the Association, in order to present to the Section of Legal Education a survey of the views received submitted a selection of same, with other pertinent matter, classified proposition by proposition, in the belief that a presentation in that way of the various views received would prove particularly helpful to those considering the subject. While it was impossible to print all the views received, yet in every instance where marked opposition was expressed to a particular proposition the committee embodied in their report the views of those opposed and *totidem verbis*.

This report, printed in full, will be found in the A. B. A. Annual Report for the year 1912 (37 A. B. A. Rep. 813-886), to which all who are interested in the minutiae of the subject are referred. A few pamphlet copies of the report are still available for distribution and may be had upon application to the Secretary of the Section of Legal Education, Prof. Charles M. Hepburn, School of Law of the University of Indiana, Bloomington, Ind.

In the following pages a brief summary will be given as to the apparent consensus of professional opinion as to each proposition. All interested in the subject are requested by the Chairman of the Committee to express their views concerning any or all of the propositions, whether *pro* or *con* to the Secretary of the Section, Prof. Hepburn, at the address above mentioned.

A

Examinations for admission to the Bar should be conducted in each state by a board appointed by the highest appellate court.

The American Bar Association has long been committed to this proposition, and the committee regard it as beyond the realm of legitimate debate.

B

A law diploma should not entitle the holder to admission to the Bar without examination by the State Board of Bar Examiners.

The American Bar Association has long been committed on this proposition, and the committee does not regard it as open to debate. Notwithstanding this, there are still a few states in which the pernicious practice still obtains. In consequence the following expressions of opinions concerning the subject from recognized leaders of professional thought may prove helpful to those who in these states are fighting to have the practice set aside and a more enlightened policy adopted:

William Draper Lewis, Dean of the Department of Law of the University of Pennsylvania, as far back as 1901, thus expressed himself regarding a proposal to abolish the practice in Pennsylvania—a desideratum shortly thereafter accomplished:

"There is no feature of the proposal which appeals more strongly to me than the one which eliminates all possibility of the degree of a law school admitting to practice without examination. The graduates of three years' schools of standing, whether the school is located within or without the state, should have the opportunity of presenting themselves on graduation for examination for admission, as is the case in the medical profession, but in no case should a degree be considered as admitting without examination. *In the long run the practice of admitting on degrees is found to be a*

disadvantage to the Bar and a still greater disadvantage to the law school conferring the degree."

The late James Barr Ames, writing as Dean of the Harvard Law School in 1901, declared:

"In this state a law-school degree does not exempt its holder from the usual state examination. I may add that the faculty of the Harvard Law School would unanimously oppose any such exemption in favor of its own graduates."

In 1876 Hon. William L. Delafield, of the New York Bar, two years before the formation of the American Bar Association, read a paper before the American Social Science Association, published in the Penn Monthly for that year, vol. 7, p. 960, in which, in discussing the condition of legal education and admission to the Bar in New York, he referred to the "pernicious privilege" once existing there of admitting upon law school diplomas, as evidencing how low the standard for admission to the Bar had at one time been in New York. See 1900 A. B. A. Rep. 545. He said:

"Unhappily the law gave to the three principal schools the pernicious privilege of having their graduates admitted to the Bar upon presentation of the school diploma, and without the public examination in open court, required by the rules."

The late William A. Keener, when Dean of the Columbia Law School, also forcefully discussed the subject as follows in 1901:

"Law school graduates have not been admitted to the New York Bar on their law school diplomas for many years.

"Those who struggled for a higher standard of admission felt that such a step must be taken in justice to the public; that the state should not extend a privilege to, and put the stamp of its approval upon any man without subjecting him to a test that would justify the expectation that the interest of clients would not be sacrificed, nor the time of the courts wasted through his ignorance.

"The practice of the law is a privilege conferred by the state. In any given state a lawyer is concerned for the most part with the law of the state as a whole, and not with law relating exclusively to any given local-

ity within the state. It was therefore urged that there should be a uniform system of examinations; that the examinations should be equally difficult or equally easy throughout the state. The only possible way to produce this result seemed to be to put the examinations under one control; accordingly a State Board of Law Examiners was appointed. The result has justified the experiment, and no one would think of returning to the old system of examinations conducted by examiners appointed for each judicial department.

"The entire separation of the law schools and the state in the matter of admission to the Bar, has I think been in the interest of both the Bar and the schools. Every applicant for admission to the Bar is on a footing of equality with every other applicant; every applicant is subjected to the same tests. The examiner is a stranger to them all; no applicant is admitted on an examination in work of which he has made a special study under the examiner. At the same time the law school enjoys the greatest freedom in the award of its academic honors, since the failure to receive a degree does not put the unfortunate student in a worse position with reference to admission to the Bar than that occupied by his more fortunate classmate."

I

The candidate shall on admission be a citizen of the United States.

This proposition was approved at the 1909 meeting of the Section. Marked opposition has been expressed to it in some quarters. See the extensive discussion reported in 37 A. B. A. Rep. 818-824. At page 824, the committee reported:

"In the United States, there is at the present time some diversity of practice.

"The following states and territories require United States citizenship as a prerequisite to admission: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Georgia, Illinois, Indiana, Kansas, Louisiana, Maine, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, New York, Pennsylvania, South Carolina, Tennessee, Vermont, Washington, Wisconsin, and Wyoming.

"In the following states *either* United States citizenship *or* a declaration of intention of becoming a citizen is necessary: California, Idaho, Massachusetts, Ohio, Oklahoma, Oregon, Rhode Island, and Utah.

"The regulations in the remaining jurisdictions, as reported to us, are silent on the subject, but this does not necessarily im-

ply that in practice an alien will be entitled to admission to the Bar therein without qualifying as to citizenship."

It is surprising that in any commonwealth in this day and generation such a practice still obtains.

II

The candidate shall be a citizen of the state in which he is applying for admission or prove that it is his intention personally to maintain an office therein for the practice of the law.

This proposition was approved at the 1909 meeting of the Section of Legal Education. For a somewhat extensive discussion of the subject, including a comparison with the practice in Great Britain and on the Continent of Europe; see 37 A. B. A. Rep. 824-827. The committee reported that of the opinions received concerning this proposition 80 per cent. were in favor of it, though a few would make its provisions more stringent.

III

Character credentials on application for admission shall include the affidavits of three responsible citizens, two of whom shall be members of the Bar, and the affidavits shall set forth how long a time, when, and under what circumstances those making the same have known the candidate.

This proposition was approved at the 1909 meeting, and the reports received by the committee to their request for opinions indicate the proposition to be almost unanimously approved. A few would require certificates rather than affidavits. See résumé of discussion, 37 A. B. A. Rep. 827-829

IV

The lawyer on admission shall be designated attorney and counselor, and not merely attorney.

This proposition was disapproved at the 1909 meeting of the Section. For the debate, see 34 A. B. A. Rep. 747-750. The range of the discussion was such that it is doubtful if the vote was squarely on the proposition as printed. See summary of expressions of opinion, 37 A. B. A. Rep. 829-833. A large majority of those writing the committee about it would seem to be in favor of it.

V

Three years' practice in states having substantially equivalent requirements for admission to the Bar shall be sufficient in the case of lawyers from other jurisdictions applying for admission on grounds of comity.

This proposition was approved at the 1909 meeting of the Section. Opinions received by the committee indicate widespread approval of the proposition in the above form. Nevertheless, some raise the question as to whether three years' practice in another state is a sufficient period to warrant admission on grounds of comity. For the very full discussion, see 37 A. B. A. Rep. 834-841.

The committee reported (Id. p. 834) that from the information before it Rhode Island requires ten years' practice in the state from which the candidate comes before admitting on grounds of comity, and Arizona six, and that the following states require five years' practice: Colorado, Illinois, Maryland, Minnesota, Nebraska, New York, Ohio, Pennsylvania, South Dakota, and Tennessee. The following three years: Connecticut, Massachusetts, Missouri, New Mexico, North Dakota, and Virginia. Wisconsin requires two years, and the following states one year: Iowa, New Hampshire, Oklahoma and Vermont.

The remaining states, from the com-

mittee's information, do not seem to demand any particular period of practice in the state from which the applicant comes.

VI

There is no necessity for the insertion in the rules of a reciprocal comity provision; that is, of a proviso prohibiting the admission of lawyers from other states on grounds of comity, unless the state from which the lawyer comes extends similar courtesies to lawyers from the Bar of the state in which the candidate is applying for admission.

This negative proposition was approved at the 1909 meeting of the Section. 34 A. B. A. Rep. 750.

Fully 90 per cent. of the replies to the committee's circular of inquiry with reference to this point are in this form: "In favor of the proposition," "Unobjectionable," "I heartily agree," "Yes," "I approve of this," "Yes, there is necessity for this," "Good, and should be adopted," "Admirable," etc., etc.

In view of the fact that a number of states have a reciprocity provision upon this subject incorporated in their rules, the committee is in some doubt as to whether the Bar generally considers there should be such a provision in rules of admission. It accordingly is particularly desirous of having a further expression of view upon the point. One member of the profession in New York expresses himself emphatically, stating:

"I think there is a necessity, and that the comity should be limited to those states extending similar courtesies."

VII

Students shall be officially registered at the commencement of their course of preparation for the Bar, upon report

of the State Board as to fitness. The Board's report shall be based upon its inspection of the candidate's credentials establishing that he has passed the required academic examination. The registration shall be with the clerk of the highest Appellate Court. A candidate removing from a jurisdiction having similar standards for registration may have the registration transferred. Nunc pro tunc registration may be permitted according to the present New York practice, which allows such registration only when the candidate had the requisite education at the date as of which he desires to be registered, and in a case where there has been no laches on his part.

This proposition was approved at the 1909 meeting of the Section, and the opinions since expressed to the committee are overwhelmingly in favor of it, except that some law school authorities have made the suggestion that the proposition might work a hardship in some cases. The individual opinions quoted by the committee (37 A. B. A. Rep. 842-845), including the quotation of a New York Court of Appeals opinion (Moore's Application, 108 N. Y. 280) and the citation of other cases, would seem to negative any such apprehension.

VIII

No candidate shall be registered as a student at law until he shall have passed the entrance examination to the collegiate department of the State University of the candidate's state or of such college as may be approved by the State Board of Law Examiners, or an examination equivalent thereto conducted by authority of the state.

This proposition was approved by the Section at the 1909 meeting in the above

form. For the debate thereon, see 34 A. B. A. Rep. 753-757.

Replies since received by the committee in answer to its requests for criticisms indicate that the proposition in its present form probably represents, as far as may be possible, the present consensus of opinion at the Bar. Those interested are referred to the quotations of opinion printed in 37 A. B. A. Rep. 845-848.

IX

Proof of moral character shall be required as a prerequisite to registration.

This proposition was approved at the 1909 meeting of the Section (see 34 A. B. A. Rep. 757), and has since been almost unanimously approved by those expressing their views to the committee.

A quotation of opinion in opposition thereto will be found in 37 A. B. A. Rep. 848, 849.

X

Student candidates for admission to the Bar, in order to be eligible for the examination for admission, shall have studied either in an approved law school or bona fide served a regular clerkship in the office of a practicing attorney during the required period of preparation.

Note.—Much material of value relating to this proposition will be found in the discussion under Proposition XI, *infra*.

This proposition was approved at the 1909 meeting of the Section. 34 A. B. A. Rep. 758.

This matter is of such fundamental importance that we quote at length from the committee's report as printed in 37 A. B. A. Rep. 849-858:

"No one of the entire sixteen propositions has received more hearty approval than has this one, judging from the replies received to the committee's request for criticisms; but three members of the profession have written us declaring it too stringent, and some

consider that the time has come for higher standards than this proposition and proposition XI outline.

"A well-known member of the profession in Ohio states: 'It seems to me the rule is inadequate, unless provisions substantially similar to the amended rules of the New York Court of Appeals are included. In this city, this matter of a clerkship is a farce. Any young fellow who is permitted to hang round a law office, with or without regularity, is commonly called a clerk for the purpose of permitting him to qualify, or he is often considered a student in a law office. This evidently serves no good purpose, and I do not believe the rule can be made too strict.'

"Your committee called attention to the New York rule as follows when presenting its report in 1909, stating (34 A. B. A. Rep. 771): 'In this connection it is well to note that the New York Court of Appeals amended rules for admission, which went into effect last year, provide that the candidate must have prepared either in an approved law school or by serving "a regular clerkship in the office of a practicing attorney," and that as to the clerkship he must produce and file "*an affidavit of the attorney or attorneys with whom such clerkship was served, showing the actual service of such a clerkship, the continuance and end thereof, and that not more than two months' vacation was taken in any one year.*" His own and the attorney's affidavits must also show "that during the entire period of such clerkship, except during the stated vacation time, the applicant was actually employed by said attorney as a regular law clerk and student in his law office, and, under his direction and advice, engaged in the practical work of the office during the usual business hours of the day."

"A member of the New York Bar considers that the time has now come to demand that every candidate before admission to the Bar shall have completed a law school course in addition to serving one year's clerkship in an office. He says: 'I should favor a proposition requiring a degree from a recognized law school in addition to a regular clerkship in the office of a practicing attorney, and that the law school should be one in which at least three years' study are required, and the period of clerkship after the attainment of the degree should at least be one year.'

"On this point one of the members of your committee stated during the 1909 debate (34 A. B. A. Rep. 762): 'I would gladly vote for a rule requiring every man before admission to the Bar to attend a standard law school course, as Judge Danaher suggested to-day; but I doubt if America is yet ready for such a rule.'

"A member of the Connecticut Board of Bar Examiners states: 'Regular clerkships, within the meaning of the rule, are not com-

mon in this state, so far as I know. Where a candidate does not attend the law school, but prepares in the office of an attorney, we require a certificate from the attorney that the candidate has studied law in his office and under his instruction for the required period. We require, so far as we can, bona fide instruction, and expect a man to devote himself to the study of the law, and not merely to do so incidentally while pursuing some other occupation.'

"We will now quote for the information of the Section the views of the three members of the profession who consider proposition X too stringent.

"The Dean of one of the District of Columbia law schools writes: 'Disapproved. Either the examinations should be open to all the world, regardless of where and how the preliminary training was acquired, or, if it is to be restricted at all, it should be restricted to those who have studied in an approved law school. Personally I am in favor of opening the examinations to every man of twenty-one of good moral character, and then having the examination so exhaustive and thorough and practical that only about one-fourth of those who are now admitted to the Bar, graduates of approved law schools or otherwise, would be able to qualify. My observation is that any tolerably clever young man of twenty-four or twenty-five can get enough law to pass the average Bar examination in one winter's home study and three months of a professional coach. It is here that the shoe pinches, and it is because the Bar examinations are so trifling that all this elaborated system of registration and preliminary examinations, etc., are being urged.'

"A Justice of the Supreme Court of Louisiana states his position thus: 'No. Examination suffices to show qualifications.'

"And a member of the Minnesota Board of Bar Examiners declares: 'I cannot approve of this. Some of our best young men are so situated that they must support themselves and others while preparing to practice law. I do not believe we should shut the gate to all who have not fathers able and willing to support them for the three years.'

"While but three have expressed such views to us, they are undoubtedly held by many, and for the information of the Section, and all interested in the subject, we will quote at length from a memorandum of authorities, English and American, concerning the meaning of the term 'regular clerkship,' and which will be found in full in 28 A. B. A. Rep. 634-642, first, however, giving one of the introductory paragraphs concerning the practice which has grown up in many parts of America permitting candidates for the Bar, who have neither had a law school course nor served a regular clerkship in an office, to take the examinations for admission:

"This thing of admitting such men to examinations for the Bar is a modern American development, an excrescence upon our system, one of the most dangerous imaginable, and one which is destined to strike the roots of its malignant growth to the very vitals of the Bar if not speedily eradicated, for such men have not spent their period of development in the environment of law, and in consequence have lacking that which breathes into them the spirit and the soul of the profession. * * * It is easy to comprehend how this system has unwittingly grown up in certain portions of America permeated with the spirit of freedom, ever determined to accord equal rights to all and special privileges to none. No doubt the practice which obtained so long of admitting to the Bar on law school diplomas was at the root of the evil, for the argument then was on its face plausible that, if a man who had the time and financial means to attend a law school and reap the advantages which accrued was admitted to the Bar without any examination, certainly the poor boy who could not afford to attend a law school, but who, urged on by the fire of ambition to better himself, had spent years in conscientious study, ought at least to be permitted to show by an examination whether or not he had acquired sufficient knowledge to practice. A fallacious argument! "Information," it has been truly said, "is not education"; neither will mere theoretical knowledge of law make a lawyer, and it bodes ill for the future of the Bar in those jurisdictions which admit to examinations for admission those who have spent their period of preparation away from the environment and spirit of the law. This thing is a modern American departure from time-honored precedent, and with profit we may at this point briefly trace the history of clerkships in law and see how jealousy the requirement has been guarded by the courts from encroachment when the matter has been before them for determination.

"HISTORY OF CLERKSHIPS IN LAW

"The statute of 20 Edward I (1292) empowered the justices to select from every county those best qualified to do service in the courts as attorneys. As early as the fourteenth century the profession was overcrowded, and in order to prevent its increase the statute of 15 Edward II, c. 1 (1322), was enacted, reserving the power of admission to the Chancellor and the Chief Justice. Notwithstanding this, incompetent men seemed to be successful in reaching the Bar, for by the preamble to the act of 4 Henry IV, c. 18 (1403), there was reference made to the great number of attorneys, "ignorant of the law and not learned as they were wont to be," and this act provided that those who were attorneys should be examined by the justices and that only those who were "good and virtuous and of good fame" should be

received and sworn well and truly to serve in their offices and have their names placed on a roll. On the other hand, those attorneys who were not good and virtuous and of good fame were to be excluded from the profession, and any found in default were forever after to be prevented from practicing. But still the Bar increased which was even at that time deemed a great evil, and an act, that of 33 Henry VI, c. 7 (1455), was eventually passed, which, after reciting that the number of attorneys was too great, and that it was their practice "to stir up suits for their own profit," limited the membership of the Bar in certain counties.

"In 1606 the statute of 3 James I, c. 7, was enacted. It recited that owing to the abuses of sundry attorneys and solicitors in charging their clients with unnecessary fees and other unnecessary demands, the clients had grown to be overburdened and the practice of the just and honest serjeants and counselors at law much hindered, and that such attorneys and solicitors for their own profit were in the habit of delaying suits to an extraordinary degree; the act provided, therefore, that none should be admitted as attorneys or solicitors except those brought up in the courts in which they wished to practice, or were otherwise well practiced in the soliciting of causes and who had been found by their dealings to be skillful and honest.

"Apart from the restraining acts of Parliament it was the custom of the courts to admit only a certain number of attorneys annually, and this practice was continued at least until the enactment of 2 George II, c. 23 (1729), which expressly provided that nothing therein should be construed to authorize the admission of any greater number than ancient usage or custom allowed. This limitation of the Bar has its counterpart to-day in the Connecticut regulation, so delightful in its possibilities for our brethren there, authorizing admissions only on vote of the Bar; also in the Pennsylvania Act of Assembly of 1834, re-enacting the provision of the Act of 1722 only permitting the judges to admit "a competent number of persons," and under which the Supreme Court of Pennsylvania has said the judges "must necessarily judge of the competent number." *Brackenridge's Case*, 1 S. & R. 187 (1814). As early as 1654, the Supreme Court at Westminster had provided by rule that no one should be admitted as an attorney unless he had "practiced five years as a solicitor in court, or had served five years as a clerk to some judge, serjeant, barrister, attorney, clerk or other officer of the court, and who on examination should be found of good ability, honesty, etc."

"The statute of 2 George II, supra, directed that no one should be admitted as an attorney "unless such person shall have been bound by a contract in writing to serve as a clerk for and during the space of five years

to an attorney duly and legally sworn and admitted," and that such person "during the said term of five years shall have continued in such service," and in order to prevent an attorney having more articulated clerks than could receive proper training, the act also provided that no attorney should have more than two, and this is the law at the present day in England. Indeed by the articles of clerkship which are still required in England, the preceptor in consideration of the services to be rendered to him, "doth undertake and promise that he will by the best ways and means he may and can and to the utmost of his skill and knowledge teach and instruct or cause to be taught and instructed the said (the student) in the practice of the profession, which he the said (the preceptor) now does or shall at any time hereafter, during the said term, use or practice."

"If the regulations in American jurisdictions now required the preceptor of a student clerk to be bound by some such undertaking and promise, as the rules of admission might properly provide, it would doubtless, in the majority of cases, result in the awakening of a sense of responsibility on the part of the preceptor, with corresponding advantage to the student and ultimately to the profession. Parliament, in order to remove any doubt as to the bona fides and intent of the regulations of 2 George II, twenty years later enacted a statute, that of 22 George II, c. 46 (1749), providing that such candidates for admission "who shall become bound by contract in writing to serve any attorney, shall, during the whole time and term of service to be specified in such contract, continue and be actually employed by such attorney or his agent in the proper business, practice or employment of an attorney."

"These regulations are the origin of the American statutes and rules of court requiring clerkship and study in the office of a practicing attorney.

"DECISIONS IN RE CLERKSHIPS IN LAW

"The courts, both in this country and in England, whenever the question has been before them, have given a strict construction to the provision that a candidate for admission to the Bar shall have served a bona fide regular clerkship of the length and character required.

"In 1798 in *Ex parte Hill*, 7 T. R. 456, a question of clerkship was before the Court of King's Bench on a rule to show cause why Hill should not be stricken off the roll of attorneys as not having served the five years' clerkship required prior to his admission. The rule was made absolute, Lord Chief Justice Kenyon saying: "The question is whether he (Hill) has complied with the directions of the act requiring him to serve the person to whom he is bound and to continue in such service for five years? * * * It is not

enough to say that during that time he occasionally did business for Hughes, or attended the Hundred Court, which is holden once in three weeks. However hard the case may press on this individual, we must not make the law bend to our wishes, but must see that there has been such a service as the act requires." Ashhurst, J., remarked: "It is not fit that we should relax the rule of service required by the act. * * * If we break through that rule in one instance I do not know what other line can be drawn or where we are to stop." And Lawrence, J., also concurring said: "The object of the act was to prevent the admission of unfit persons to be attorneys, for which purpose it required that they should serve the masters to whom they were articulated for five years."

"In 1808 the Supreme Court of New York, at a time when Kent was Chief Justice, held in a case reported in 3 Johns. 261, that a preceptor's certificate that the applicant "had regularly pursued the study of the law under his direction and superintendence" was insufficient, and that the attorney ought to certify that the clerk had served his clerkship regularly in the office of such attorney. Again, a year later, the same court in *A. B.'s Application*, 4 Johns. 191, ruled, per Chief Justice Kent, that the certificate of the preceptor that *A. B.* had studied in his office (which was at a different place from that in which the attorney resided) under his direction and advice and as his clerk was not sufficient, and that "the clerk must be in the office under the personal direction of the attorney himself, and the establishment of different offices in different towns and counties by the same attorney was an evasion of the law and an imposition on the court."

"In 1814 the Supreme Court of Pennsylvania in *Brackenbridge's Case* (1 S. & R. 187) refused on technical grounds to interfere with the decision of a Court of Common Pleas refusing to permit the examination of the applicant under a rule requiring the service of a regular clerkship within the state for the term of three years with a practicing attorney or gentleman of known abilities, the proof in that case being a certificate by one of the justices of the Supreme Court that the applicant had served a regular clerkship within the state for three years under the said justice. The opinion of the court traced the origin of the rule back through the court's rule of 1792 to the statute of 2 George II, *supra*, and held that while the justice of the Supreme Court was undoubtedly a gentleman of known abilities, nevertheless his rank was too high for the service under him of such a clerkship as that contemplated by the framers of the rule.

"In 1825, a question arose in the Court of King's Bench, *In re Taylor*, 6 D. & R. 428, as to what would satisfy the requisites of the statutes of 2 and 22 George II, *supra*, as to clerkship. Said Chief Justice Ab-

bott: "We are asked to allow this gentleman to fill up intervals of days, nay, even of hours, in various parts of every year of his clerkship during which he rendered no service to his master and was actually bound by the duties of an office under government to devote all his time and all his service to the public. This it is impossible to allow without violating both the letter and the spirit of the acts of Parliament."

"Three interesting cases from the Court of King's Bench in the matter of clerkships are reported in 10 Jurist (N. S.) 939, *In re Smith* (1843), *In re Mills* (1862), and *In re Duncan* (1864), all of which evidence the intent to construe the requirements strictly, though equitably for the best interests of the profession. In the latter case Chief Justice Cockburn said: "Unquestionably the supervision and personal superintendence of the master is essential to good service."

"In 1894, the Supreme Court of New York for the First Department, in a case not officially reported, but cited in *Smith's New York Court of Appeals Practice* (5th Ed.) at p. 155, refused an application for examination for admission to the Bar because the candidate's registration certificate showed that he had entered the office of a practicing attorney merely "as a student at law." The court said: "The certificate was rejected by us because it did not seem to comply with the rules of the Court of Appeals. Throughout the whole of the rules the serving of a clerkship is spoken of. * * * Having in view the reason why the requirement of a practical clerkship was made of even graduates of law schools, it did not seem to us that being a mere student in an office was in any way a satisfaction of the requirement of the rule. The requirement of rule five is certainly a very simple one, and it would seem that it could easily be complied with. We have, however, found that there exist some persons who make it a business to coach for examinations, and who give certificates of attendance as law students in their offices, the student not doing a particle of real clerical work, and they have given certificates of the kind under consideration."

"In 1899, in a Pennsylvania case, *Wilson's Application*, 9 Pa. Dist. Rep. 102, a common pleas court for the First judicial district refused to permit four years of study of law as outlined in the obligatory course to be accepted in lieu of the service of the three years' office clerkship required by the rules. And in 1902, the Supreme Court of Pennsylvania, when establishing a State Board of Law Examiners, promulgated a rule whereby the three years' period of preparation after registration, when passed other than in a law school, is required to be spent "by bona fide service of a regular clerkship in the office of a practicing attorney" within the state, the words "bona fide" having been inserted for the purpose of removing any doubt

or ambiguity as to the intent and meaning of the office service required.

"It is well settled by the decisions, English and American, that the term 'service of a regular clerkship' has a clearly defined meaning, and that it can only be complied with by a regular, continuous, bona fide service during the entire period under the direction of the preceptor and in his law office. In no reported case has the question been more fully or more carefully considered than in the American one of *Dunn's Application*, 43 N. J. L. 359, argued in 1881 before the New Jersey Supreme Court, a case of such importance that it was reprinted in 1900 in 9 Pa. Dist. Rep. 107. In that case the court in the opinion filed per Dixon, J., declared: 'Whether an applicant has studied sufficiently is left, by our rules, to be determined upon the examination which he must undergo; and altogether aside from that question is the inquiry whether he has served the necessary clerkship. The substance of this prerequisite it is not difficult to perceive. A clerkship to an attorney imports the office of assistant to an attorney, an actual occupation in and about the attorney's business and under his control. The services are to be rendered, not solely or mainly by the study of law books, but chiefly by attending to the work of the attorney under his direction. The purpose of the rule is that the clerk shall be actually engaged in the practice of law under the guidance of his master for the stated period, so that by direct contact with an attorney's duties he may acquire the skill and facility in the profession which are necessary for enabling him to protect and promote independently the interests that clients may afterwards commit to him. This is the sole object of requiring the clerkship to be served with a practicing attorney. For the mere study of legal principles, a retired counselor or a professor would be an apter guide.' The court then declared that the applicant and his preceptor both seemed to have misconceived the purport of the rule and said: 'They have regarded study as the equivalent to clerkship. We do not.'"

"It is well for us to remember in this connection that in England, at the present time, a man to be entitled to practice as an attorney must before examination prove that he has served a regular clerkship for five years. Furthermore, in Germany, as pointed out to us in 1908 by Judge von Lewinski, of Berlin, in his illuminating paper on the 'Education of a German Lawyer' (A. B. A. Reports, XXXIII, pp. 814-827), the candidate for admission to the Bar *after* he has completed his three years' training in the law school, must before examination for admission spend four years and four months in practical work. He then, if he passes his examination, is admitted to the Bar. The four years and four months according to Judge von Lewinski (Id. pp. 822-825), is divided as follows:

As assistant to the judge in one of the smaller county courts, nine months; in the superior court, studying civil and criminal proceedings, one year; following this, four months with a state's attorney acquiring knowledge of criminal prosecutions; then a six months' course in the office of a counselor at law; after that, one year in studying practice in a county court in a large city and receiving instruction in civil law and procedure from especially qualified judges, and finally nine months is devoted to a study of the work of the Appellate Court, in all four years and four months *after* the completion of the three years' law-lecture course. Then, if he wishes to be a judge or state's attorney, he is compelled to undergo a still further course of training.

"One member of our committee calls attention to the fact that in Germany the professors of law seem to recognize that they have a two-fold function, one, the theoretical training of a group of men, who are subsequently to be called to the Bar *after thorough drilling* in practice, the other, the education of a larger group who desire merely theoretical knowledge of the law without expectation of ultimate admission to the Bar."

XI

No student candidate shall be eligible for admission to the Bar until he shall have devoted four years in preparing for call to the Bar, either by the service of a four years' clerkship in an approved law office, or three full years in an approved law school, followed by one year of clerkship in an approved law office; provided, however, that the fourth year may be passed in an approved law school in post-graduate work, including procedure and practice. In the draft for the rules a footnote should be appended to this provision to the effect that in those states in which candidates are eligible for examination for admission after completing only a *two* years' law school course, the one year additional of practical work should be required. This would leave the entire period of preparation in *those states* at only three years.

Note.—Much material of value relating to this proposition will be found in the discussion under proposition X, *supra*.

This proposition was approved, after debate, at the 1909 meeting of the Section. For the debate, see 34 A. B. A. Rep. 759-764.

This proposition is of such fundamental importance to the future of legal education and the administration of justice in America, involving as it does the probable next advance in the American system for making lawyers, that we quote at length from the committee's report thereon, giving the many views *pro* and *con* expressed therein, as printed 37 A. B. A. Rep. 859-873:

"The object of the provision embodied in proposition XI is to insure at least one year being devoted to the subject of practice and to differentiate the man who merely wants a general education in the law from the man who desires actually to engage in the practice of the profession.

"Dean Irvine of Cornell, a member of the committee, approves the proposed four years for preparation, 'not so much upon the necessity of an extra year for training in practice as upon the inadequacy of three years for covering, in a proper manner, those branches of law which may fairly be deemed essential to every student.' He further says: 'I do not think that instruction in pleading or even in practice should be deferred until the fourth year. I believe the law schools should afford such instruction as a part of the regular course.' He adds he fears that the proposition in its present form 'would tend to the elimination of practice courses from the law school's curricula, and that the student would be relegated to an unscientific and haphazard picking up of practice information in his fourth year.'

"In answer to our 1910 request for criticisms we received replies from thirty different states. Over 72 per cent. of those replying unqualifiedly approve the proposition in its present form. The remainder criticize particular provisions.

"One of the tersest replies is from California, the writer saying: 'In favor of the proposition because of practical difficulties involved by any material change therein.'

"We think the discussion which follows will emphasize the wisdom of this remark.

"The distinguished Dean Rogers of Yale noted his dissent from the proposition because it treated as equivalents time spent in a law office and time spent in a law school; and Chief Justice (now Governor) Baldwin of Connecticut opposed it on the ground that the country was not yet ready for it.

"That this important question may be fully

before you, we present excerpts from the 1909 debate, as follows (34 A. B. A. Rep. 759-764):

"Henry Wade Rogers, of Connecticut: 'I desire to dissent from this proposition, and I do so because it treats as equivalents time spent in a law office and time spent in a law school. A resolution was passed by the American Bar Association last year requiring students to study law for three years in a law school or four years in an office. I, therefore, move that proposition XI be recommitted to the committee for further consideration, in view of the action taken by the American Bar Association last year.'

"Franklin M. Danaher, of New York: 'I second that motion.'

"Lucien Hugh Alexander, of Pennsylvania: 'I call attention to the fact that the action of the Bar Association last year was the adoption of a recommendation that candidates should study law for three years if graduates of law schools and four years if not graduates of law schools. The object of the committee in presenting proposition XI in this form was not at all in opposition to that action, but simply to suggest that in the judgment of the committee there should be considered by this Section the question whether or not there ought to be an additional year of practice, making four years for all men. That does not alter or modify the requirement or resolution referred to that a man shall have studied three years, if a graduate of a law school, and four years, if not.'

"Henry Wade Rogers, of Connecticut: 'But it treats the two periods as exactly equivalent to each other, and that is my objection to it.'

"Lucien Hugh Alexander, of Pennsylvania: 'I think I voice the sentiment of the committee when I state that, in presenting these points for incorporation in the rules, the committee had in mind not necessarily the conditions as they exist to-day, but the conditions of the future. Judge Danaher, for many years secretary of the New York State Board of Law Examiners, in addressing us has emphasized the importance of one year's practical training in an office, but he advised cutting off one year of law school study in those jurisdictions where three years is now required. If Judge Danaher's proposition is carried out, a student during his last year must be entirely out of the law school and in an office. The committee does not think it a practicable thing for a man to carry on the work of a standard law school, and at the same time be serving a bona fide clerkship in an office. On the other hand, we do not think that the Section ought to do anything that will adversely affect the three years' curricula of law schools of standing to-day. We believe that a man should have one year of practical work; but we also believe that a man should not have his law school course disorganized in order to secure it, as would

be the case if he were to spend but two years in the law school. Between the two horns of the dilemma, between this Scylla and Charybdis, there is but one course, namely, that the candidate must get his one year of practical training after he has completed his law school course. We see, therefore, no way to meet the situation but to require that men who are coming to the Bar shall take four years in those jurisdictions where a man is now permitted to come up for examination after three years in a law school; and in those jurisdictions where only two years in a law school is now required, we say add to that the one more year of practical training."

"Henry Wade Rogers, of Connecticut: "I am not objecting to the requirement of one year's additional time spent in a law office."

"Simeon E. Baldwin, of Connecticut: "Is there any utility in our affirming a proposition which we know the country is not prepared for? The American Bar Association, by years of patient effort, has greatly advanced the standard of legal education, and has advanced materially the limit of time which must be given to law school study in order to acquire a degree. We now propose to ask another year of study, and we turn to the German practice as an authority, or to that of England in regard to her attorneys, who are not ordinarily men of what we call a liberal education. It seems to me that if the students in a three-year law school course were to utilize their vacations in clerkships and in office work, the end in view would be achieved, and I believe this to be common sense advice for a student who desires to acquire a knowledge of practice. Tell him to enter his name in the office of an attorney in the city where he proposes to practice, and to learn practice during his vacation. We have been told to-day that the term of study required in a year of law school work runs from thirty-two to thirty-five weeks. That leaves a good many weeks in a year, and two months each year for three years could be well spent by every student as a registered clerk in an office, and if so spent I think that all would be accomplished that could reasonably be asked in the present condition of American society. We are not built as the Germans are, on the theory of life-long preparation. Our institutions are founded on the theory of youth, people are availing themselves of the work of the young, and we want to get men started in the world at an age when they are still young. I sympathize, therefore, with the opposition to the proposition as it now stands."

"Lucien Hugh Alexander, of Pennsylvania: "Speaking personally, and not for the committee, I would call attention to the fact that the committee, when considering this matter, was not presenting what it believed to be an ideal standard, but rather one which we believe to be practical enough to be adopted in jurisdictions where rules of admission

are to be changed. In my own state of Pennsylvania, until within a few years, a student could prepare for call to the state Bar in but one law school, that of the University of Pennsylvania. Later Dickinson Law School was added, but no credit was given to a man who took any of the other great law school courses; after graduation from Harvard or Yale or any other law school, he was compelled to return to Philadelphia and serve either a three years' clerkship in an office, or else enter the University of Pennsylvania and take his last year there, and then be admitted on his diploma according to the practice then obtaining. It was with the greatest difficulty that we finally succeeded after years of effort in getting our courts to recognize attendance in the great law schools of the country outside of our own state as equal to an equivalent period of time spent in an office. Speaking again for myself, and not for the committee, I believe that it will be practically impossible in many jurisdictions to secure the adoption of a rule which will require more time in a law office than in a law school. In presenting a draft for standard rules for admission to the Bar, the thought of the committee was that only rules should be approved which would stand some prospect of adoption in the various jurisdictions. Again speaking personally, I would gladly vote for a rule requiring every man before admission to the Bar to attend a standard law school course, as Judge Danaher suggested to-day; but I doubt if America is yet ready for such a rule. I, however, would oppose the adoption of any standard rule which makes the distinction which has been stated, for it would give a false impression; we ought not to indicate that four years in an office is equal to three in a good law school. We know it is not, and by attempting to make it appear that it is we would make it more difficult to secure ultimately the general adoption of a rule requiring every candidate for the Bar to take a standard law school course. A man in order to practice medicine must attend a medical school, and there is no good reason why the bars should be permitted indefinitely to remain down in our profession. We think our suggestion in the form presented complies with the action of the American Bar Association last year."

"Levi Turner, of Maine: "I am in entire sympathy and accord with what Judge Baldwin has stated. My own experience justifies the wisdom and practicability of the course he suggested. I have sometimes been asked what the ideal course for a law student would be. I myself never had the advantage of a law school training. My reply has always been that a student ought first to have two or three months in a law office, reading some elementary book, in order to familiarize himself with the terminology and nomenclature of the law, so that when he takes his first lecture in the law school he will be able

to comprehend it. Then let him spend his vacations in the office of a general practitioner. My observation has been that students who do that are well qualified to take hold of the real activities of the profession when they are admitted to practice. I know whereof I speak, because in the office I left when I went upon the Bench, we had three graduates from Harvard Law School. Two of them had pursued the course I suggest; that is, immediately upon finishing their first year in the law school, they entered the office and took part in the business activities there. Of course, to put a student in a corner of a law office simply as a piece of furniture, not allowing him to participate in the business, is useless, and time thus spent is valueless to him; but if he is given a share in the work and responsibility of what goes on, my experience is that the knowledge gained during his vacation will fit him to take up the work of his profession with intelligence, skill and reliability."

"Upon a vote, the rule as printed was approved."

"We present herewith criticisms upon the proposition received in answer to our 1910 request for same.

"A well-known member of the New York Bar writes: 'Experience through many years at the Bar and in judicial life and some experience as a lecturer in law college, I am satisfied that some discretion should be lodged with the commissioners regarding this period of study prescribed by proposition XI. To illustrate, in my academic days my class came up to one individual who had then twice failed in his examinations, never having gone beyond the change of signs in algebra, and was at the examination of our class again turned back, failing the third time. It is perfectly apparent that such a student would require four times the period of study to accomplish what the average student would accomplish, and the rule would require a student of mature mind to be harnessed with four years of student life in office or law college as an absolute requisite. It is calculated to discourage the very character of intelligence that we desire to encourage in the success of our profession. Looking upon the rules for admission and seeing that four years of mature manhood must be practically lost in the study before he can reach a standing in the profession tends to drive him to other industries or professions less incumbered, and the profession loses perhaps a brilliant future in the profession. One of the very profound lawyers in the State of New York, in conversation with me relative to the present examinations for admission to the Bar, at the time having reached the highest place in judicial life, and quite familiar with the character of examinations, in speaking of it said: "If such examinations had been required when I was admitted to the Bar, I

would undoubtedly have spent my life following a plow over the lands of Central New York." While proposition No. XI is very proper as a general rule, it should be subject to opening upon proper showing. Therefore it seems to me a discretion should be lodged with the commission upon special application with specified evidence of capacity with, if you please, an additional fee for passing upon such application. But with the possibility that the applicant, abundantly satisfying the commission of his competence and fitness for admission, should not be required to pass four years arbitrarily in an office or in a law college.'

"A member of the profession in the state of Washington expresses his views as follows: 'I am not in favor of admitting candidates to the Bar unless they intend to practice. I believe that any student who desires a law education for theoretical training only should be confined to his law degree, and should not be enrolled as a member of the Bar. Nor do I believe that any law school work has yet been able to take the place of practical experience acquired by service in a law office. I therefore favor three full years' work in an approved law school, followed by one year of clerkship in an approved law office, as the most efficient method of acquiring a practical and working legal education; but I would make the rule less hard and fast by permitting either three years in a law office or two years at school and one year in an office. Such a rule, I am persuaded, would best meet the varying conditions of the entire country.'

"The Dean of a Trans-Mississippi law school says: 'Objectionable because of the following: After the word "school" in the fifth line, "followed by one year of clerkship in an approved law office." I think this an unnecessary hardship, and the clause requiring a three years' course in a law school to be followed by one year of clerkship in an approved law office should be stricken out. In many states, especially the newer states, there will be practical difficulty in many law school students securing clerkships in approved law offices. Further, it occurs to me that the law school course of study should be so arranged and such place given in the course to moot court and practice work that the student will be fairly well equipped to enter at once upon the practice without serving a year as clerk. I am satisfied that the practice work of some law schools conducted through the senior year is more advantageous to the student than the practice he will get in an office.'

"The Dean of one of the smaller Eastern law schools, writes: 'I approve the four years in office work and study, but I would leave the law school at three years. I think Dean Rogers' criticism valid. I would make

two groups of subjects for examination as now is done in New York, viz.: Group 1, Substantive Law. Group 2, Evidence and Civil Procedure—and require the student to pass in both groups. This will take care of both branches of the law. Under this scheme the schools can be trusted to take care of *practice*, and no student can neglect it and hope to get into the profession. In any event, I would strike out the words "including procedure and practice." The law school man must have that subject before he leaves the school.'

"A member of the Bar in the state of Minnesota expresses himself thus: 'My criticism upon eleven would be that you would add very little to the up-to-date law school where they have special provision for procedure and practice during one of the three years. You would not accomplish the purpose of requiring every student in an office to have at least two years in a law school, which ought to be required, and I can see how there might be cases where a student in a law school might not be required to take office work, which I think ought to be required. In other words, in putting out a four-year course, a student ought to be required to have both practical and theoretical work. If he is not admitted on his law diploma he ought not to be admitted without work in a law school. The most of the states, or at least a large number of the states, now require dentists and doctors to take work in regularly accredited schools before they can be admitted to practice. There is no reason why the same standard should not be required of lawyers, but the practical work ought to be so as to give them an understanding of the needs of lawyers before they have their certificates of admission.'

"The following is from a well-known member of the profession in New York: 'I do not regard four years' clerkship as the equivalent of three years in a law school and one year in an office. I desire to emphasize Dean Irvine's remarks concerning instruction in practice, and even to go beyond them. The whole body of the substantive law has been built up on the law of pleading and practice. I do not believe in any law school course that does not found itself on the law of procedure. In my judgment, fully one-third of the required course should be devoted to that subject. A workman who does not know the tools in his tool-box and the uses of each, never makes a good workman. And I think it is unquestionably true that any lawyer who thoroughly understands both law and equity procedure is a pretty thoroughly equipped lawyer. I have never seen any reason to differ from Judge Story's views as summed up in the last section of his book on Equity Pleading, and from my six years' experience as a lecturer on procedure I strongly support Judge Story's view.'

"The Chief Justice of one of the Western states writes: 'Rule XI requires one year's clerkship in a law office after the completion of a three years' course in a law school. This seems to me at present not a desirable provision. The work in a law office is a desirable preparation, but it is often of little real value. Pleading and practice should be taught in the regular three years' law school course, and if properly taught the student will get a better preparation for actual practice from such instruction than from casual experiences in the ordinary law office.'

"The Dean of a law school in the District of Columbia says: 'Disapproved. Certainly not more than three years altogether should be required as a period of preliminary study to take the Bar examination. If the law schools do not teach the general principles of practice, that is the fault of the law schools. The student should not be penalized by another year's postponement of his getting out into the real world, besides which, anyone who has had a personal experience knows that more practice work can be taught in a law school in one winter than can be picked up by the ordinary law student in a law office in two or three years.'

"Contra to this, we have the following views from the Chief Justice of a far Western state, who says: 'I approve fully of the requirements of this proposition. It will be difficult in some of our Western states, however, to secure the legislation necessary to make the rule effective, even to the extent of adding the extra year of practical work to the two years' law course now required, as suggested in the note. In this state a course of two years of twelve months is now required. Our legislature would yield very reluctantly to any suggestion to extend the time for preparation. The popular idea that the struggling young candidate shall not be kept out of actual practice longer than is absolutely necessary is very wrong.'

"The Dean of the most important law school in the state of Pennsylvania expresses himself thus: 'In the main I agree with Dean Irvine. Personally I believe that no general announcement should be made until the Bar is ready to say definitely the course of education which students must take. In a short time I think the profession will insist on a three years' law course and a one or two years' apprenticeship corresponding to the hospital training of the medical practitioner.'

"In New York State, a committee of the New York County Lawyers' Association, of which committee Mr. John R. Dos Passos was chairman, during the last two years has strenuously advocated the amendment of the New York rules so as to require five years of study 'of which at least two years shall actually be spent serving a regular clerkship in the office of a practicing attorney,' 'the

clerkship to follow the course in a law school or its equivalent in prescribed study.'

"From a memorandum on this subject presented to the New York Court of Appeals on behalf of the New York County Lawyers' Association, we excerpt the following:

"The effect of this rule is to lengthen the term of apprenticeship from three to five years, and to compel the student to pass the last two years of his course in the office of a practicing attorney. If this amendment were granted, no student could be admitted until he was 23 years of age. The almost unanimous opinion of the Bar is that this is none too late; that the student is better able to commence his real work at 23 than at 21. * * * We beg again to quote from the report of the last-named committee: "Under the rules as they formerly existed a candidate for admission to the Bar was obliged to serve a clerkship of some considerable length in a reputable office, and to produce proof of honest and continuous compliance with this provision. Under this practice a candidate was obliged, during the prescribed time, to continuously devote himself to the law, to the exclusion of any trade or occupation, and he thereby was able to acquire some degree of familiarity with the history, traditions and atmosphere of the profession he proposed to adopt—of all of which, under the existing procedure, they are too apt to be lamentably ignorant. Many of those who have appeared before us have frankly stated that they have no intention to practice law, and apparently sought admission to the Bar largely because of the ease with which admission could be obtained."

"Of one thing we feel reasonably sure—that it is the general opinion of the legal profession everywhere in the United States that the period of legal study should be more than three years, and that law students should not be called to the Bar until they have had actual experience in an office where active legal work is performed. Under the present system the apprentices enter the profession with absolutely no knowledge of practice. It is true that they have hastily gone through the Code of Procedure but their hands and minds have never grappled with actual work. Moreover, they know little or nothing of the manners and methods of professional business—of the goings and comings of office life, and many of them for years after they are admitted are actually helpless to themselves and to lawyers who hire them as clerks. They practically begin to study the real work after they have been admitted—following a sort of post-graduate course at the expense of the lawyers who employ them or of their clients, if they succeed in securing any, and very frequently to the inconvenience of the courts, where time is spent by the trial or

special term judges in giving lessons to the ignorant practitioner at public cost.

"We find a class of young men seeking admission to the Bar, 'who, whatever can be said of their ability to pass technical examinations, impress us as lacking the kind of moral and intellectual fibre essential for the creation of a strong and reputable Bar. The effect is already apparent. From the judges of all the courts come complaints of the number of lawyers appearing before them who are without a sufficient degree of intelligence and skill in the practice of law, to properly protect the interests of their clients.' Committee on Character, *supra*. It can be safely affirmed that the profession of the law is equal in dignity and importance to that of the soldier or sailor. Yet the cadets at West Point and Annapolis are subjected to a four years' course of study whose rigidity and thoroughness have enabled the United States justly to claim full equality with, and in most instances a superiority over, all other nations in respect to its military and naval officers, and the excellent results upon the graduates from these academies are universally conceded.

"In the Matter of Pratt, 13 Howard Practice, 1, in an able report of the Examining Board to the Supreme Court of New York, the same recommendation was made: "All experience has proved that nothing short of a term of thorough study and training, and that in the office of a practicing attorney, will ever make a lawyer. As well might the surgeon become qualified to practice his profession away from the subject, the mechanic to acquire his art by the abstract study of his trade, or the chemist away from his laboratory, as the legal student to become qualified to practice by merely reading without practical education."

"The same view was expressed in England in 1899 by the Examination Committee appointed under authority of Parliament by the Incorporated Law Society, as follows: "The Committee adhere to the opinion so long held by the Council, that university education, where practicable, is desirable. * * * But, for reasons presently given, they consider that in nearly all cases the university teaching must precede the service under articles (i. e., the service of a five-years' regular office clerkship). * * * These duties occupy him (the clerk) from hour to hour and from day to day, during the whole of his day. The master has to certify at the end of the service that the clerk has, from the date of his clerkship, been diligently employed in the master's professional business, and has not been engaged in any other employment. The clerk ought, therefore, to be occupied in the actual daily work, with its endless variety and examples in the applica-

tion of principles of law, and in all these things under continual criticism and advice from the master or responsible and skilled managers, and it is in this way during the five years' service that a knowledge of the principles as well as of the practice of the law and its application to actual business becomes little by little fixed in the mind of the clerk, in a manner of which no academic teaching could hope to attain. Simultaneously an industrious articulated clerk ought to read privately, or with the aid of a tutor, out of office hours, or at convenient times when he can spare the time, the text-books and books of practice with increasing grasp as time goes on, and as his knowledge becomes enlarged by the actual practical work of each day. It is with experience that reading, combined with actual practical work, becomes easier and the results more lasting. In this way an articulated clerk by degrees acquires a knowledge of the principles and the practice of the law by reason of the work which he is obliged to perform day by day, and which the utmost industry and attention could not acquire from theoretical or academic teaching. * * * The university diploma ought to stand, and in the present University of London, does stand, for a high standard of theoretical knowledge in a varied range of subjects and as the result of long study. * * * They (the Committee) are of the opinion that the existing examinations of the Incorporated Law Society being conducted by practicing solicitors, and aimed at testing the knowledge of the student in the principles and practice of the law mainly from a practical standpoint, form a much better test than would be provided by any university examinations. If, on the other hand, a university degree, at whatever date obtained, entitled its holder to practice the law, the result would be that the profession would no longer be restricted to persons duly qualified with practical experience and knowledge."

"We beg in this connection also to call the attention of this honorable court to the language of the Committee on Character, appointed by the Appellate Division of the Supreme Court of New York, First Department, for the year 1909: "The committee have been more than ever impressed during the past year with the apparent lack of general education and fitness of many of the candidates. A very considerable proportion of the candidates are unable by reason of their youth, inexperience and meagre education, to satisfy the committee that they are competent to assume the responsibility of practicing as attorneys or capable of understanding or upholding the ethics of the profession. This is especially true of foreigners whose obviously limited knowledge of English would seem to

be an almost insuperable barrier to an intelligent comprehension of the law and of the principles which should govern its practice. Inasmuch as a considerable proportion of this class are obliged by the rules of the Court of Appeals to secure a law student's certificate from the Regents of the University before taking the law examination, the committee are of opinion that the Regents should raise their requirements and insist upon such general attainments as will lay a proper foundation for legal education, especially as regards the mastery of the English language. At the present time it appears to be possible under rules established by the Regents, for a student proficient in foreign languages and other subjects to obtain a law student's certificate from the Regents without having passed any requirement in English. Your committee are of the opinion that the requirement in English for a law student's certificate should be at least as high as that demanded for an academic diploma (thirteen counts) and suggest that a recommendation to this effect be made to the Regents of the University. Under the rules of the court now in effect, the Committee on Character would not feel themselves authorized to reject a candidate for lack of general education or inability to speak and understand English, provided he presented the required evidence as to his moral character, and it seems to your committee highly desirable that a rule should be adopted directing the committee to inquire into the general fitness of candidates."

"Dean Kirchwey of the Columbia Law School, a member of the committee, was not able fully to indorse the suggested change, but was of opinion *'that a period of four years of law study, at least one of which should be served in the office of an active practitioner of law, should be required of all candidates alike.'* Professor Kirchwey expresses himself on this subject as follows:

"As to the second amendment proposed, I am of the opinion that it is not practicable at the present time to require five years of professional training as a prerequisite for admission to the Bar and that a period of four years of law study, at least one of which should be served in the office of an active practitioner of law, should be required of all candidates alike, whether college graduates or not, instead of the two and three year requirement now in force. I have no sympathy with the view that the requirements for admission to the Bar should be so fixed as to enable a young man to appear as an adviser of the courts at the age of twenty-one, and I don't believe that the legal profession, least of all that the courts, are in sympathy with that view. It proceeds on the singular assumption that the "right" to

practice law exists as an attribute of American citizenship, independently of considerations of fitness for the tremendous responsibilities which attach to that vocation. The logical result of that attitude would be to abolish all tests of fitness and to make a man eligible to practice at the Bar as he becomes eligible to vote upon offering proper evidence of his having reached his majority. I doubt indeed if it is desirable to have any age fixed for beginning the study of law. The requirement should be one of general educational and professional equipment and this should be made so high as to prevent any but men of adequate training and maturity of mind from entering upon the independent practice of the profession. What the profession needs is not an influx of *boys* who have been crammed so as to pass the Bar examinations, but *men* who are qualified in point of judgment and maturity of mind as well as of learning to carry the responsibilities of the most exacting of the professions.

"The argument for the requirement of a period of clerkship in the office of a practicing lawyer seems to me conclusive. Neither the requisite technical knowledge nor the proper professional spirit can, in my opinion, be acquired in any other way, but I am convinced that at the present time not more than a year of service in an office can wisely be exacted. If more were demanded it would inevitably be at the expense of the systematic training in legal principles and the knowledge of law which, under existing conditions, can be obtained only in a good law school. I am sure that I am safe in saying that the training of the law schools has come to be indispensable and that it is only through a combination of this training and that of the law office that a man can derive a proper equipment for the work of the profession. It seems to me also that it would be unfortunate so to emphasize the clerkship requirement as to induce students to reduce the period of law school study below three years. That period has come to be recognized as the standard of legal education in this country and is being adopted as rapidly as possible by every school that is animated by a proper sense of its obligations to the profession and to the community which the profession serves. This is especially true of the State Universities of the West and Middle West as well as of the better schools in the East and South. Under these circumstances it would seem to be the part of wisdom so to frame the rules as to furnish no temptation to law students to interrupt their professional study before it has been properly rounded out in the law school.

"I venture to suggest, however, that a five-year requirement would be eminently proper in the case of candidates who make their way to the Bar otherwise than through

the medium of the law school. I think that any one who is familiar with the conditions under which the student in a law office pursues his reading, will not be inclined to dispute the statement that a single year in a good law school does more for the education of a man in the rules and principles of law than two or even three years spent in an office. To require five years, therefore, of every one who has not spent, let us say, at least two years in the study of law in an approved law school, would seem to be only a reasonable and proper discrimination between the two classes of students."

"On this same subject, a committee of the Bar Association of the City of New York, of which committee Mr. Francis Lynde Stetson was chairman, prepared a memorandum for the New York Court of Appeals and recommended an amendment of the rules of admission as follows:

"The provisions for requisite periods of study must be fulfilled by serving a regular clerkship in the office of a practicing attorney of the Supreme Court of this state after the age of eighteen years; or after such age by satisfactory attendance upon, and successfully completing, the prescribed course of instruction at an incorporated law school or a law school connected with an incorporated college or university having a law department, organized with competent instructors and professors, in which instruction as hereinafter provided is regularly given; *the entire period of study of students to be not less than four years, of which at least one year must be spent in the office of a practicing attorney after successful completion of the law school course, the aggregate combined periods of such clerkship and such law school attendance being not less than four years.*"

"We close the presentation of the discussion on proposition XI with the words of Mr. Edward S. Cox-Sinclair, of London, in his paper in 1910 before the Section, on "Requirements for Admission to the Bar in Great Britain and Her Possessions and On the Continent of Europe—A General Survey" (35 A. B. A. Rep. 809-828). He says:

"It will be seen that although the period and type of practical training varies in the different countries under review, yet in each of these systems a term of practical work, even if not obligatory is coming to be regarded as an essential preliminary. Practical training reaches its highest point in such countries as Germany and Belgium, where in effect there is, as with you, a fusion of the two branches of the profession. In England (and in other countries such as France and Italy) where there is a separation between the branches, practical training in the office of an experienced advocate is so common as to almost afford a rule. *The tendency every-*

where is in the direction of imposing a period of actual practical work, and where such an obligation already exists of making that period longer and its methods more stringent. It is in fact becoming everywhere recognized that the great interests entrusted to lawyers should not be risked in the hands of amateurs or left to the chance of casual capacity.'"

This proposition was discussed at considerable length at the meeting of the Section of Legal Education of the American Bar Association in 1912, and arguments in favor of the importance of this one year's clerkship were presented by Hon. Frank Sullivan Smith, a member of the New York Board of Bar Examiners (37 A. B. A. Rep. pp. 721-727). He expressed not only his own views but those of his colleagues upon the board, Hon. William P. Goodelle and Hon. Franklin M. Danaher. We quote from the conclusion of his forceful remarks as follows (Id. 724-727):

"The new rules of the New York Court of Appeals, which took effect July 1, 1911, mark a great advance in legal education in New York, in that they require of one class of students four years of study of the law, of which one year must be passed continuously by serving a clerkship in the office of a practicing attorney. Unfortunately this class is restricted to those who are not graduates of a college or university. No such salutary rule applies to college graduates, who may be admitted after three years of study, wholly by serving a clerkship in the office of a practicing attorney, or wholly by attending a law school, or partly by serving such clerkship and partly by attending a law school. There is, in fact, at the present time no adequate reason for such a distinction in New York between college graduates and non-college graduates. Ten years ago there seemed to be some ground for the rule. Then there were 14 per cent. less failures in Bar examinations among college graduates than among non-college graduates. In 1911 this difference had diminished to 2.3 per cent. The cause is apparent. Meantime, the Court of Appeals raised the requirements of preliminary education of non-college graduates from 48 regents' counts to 60 counts, equivalent to high-school graduation. A college education had not lost its advantage, but high-school education had proved its efficiency. There is, then, no reason to warrant applying the requirements of a year's clerkship in the office

of a practicing attorney to a non-college graduate and at the same time relieving a college graduate from the same requirement.

"Thus far the question under discussion has been considered from the viewpoint of a Bar Examiner, as bearing upon the greater or less facility of the student in passing his examination for admission to the Bar and his immediate fitness to practice law. If we study the young lawyer after his admission, we find other important reasons to sustain a compulsory preliminary clerkship.

"1. It has an inestimable educational value in familiarizing the student with the duties of a lawyer in his office and in court. He makes the acquaintance of the judges before whom and of the lawyers with whom he will practice. He learns the practical use of the legal terms, the theoretical use of which he has learned in the law school. He acquires a *savoir faire* which upon his admission distinguishes the finished lawyer from the tyro and makes him at once useful to his employer, his clients, and to himself. Without such preparation a law school graduate may be a fair constitutional lawyer, but of little practical use in a busy law office.

"2. A year's clerkship does much to determine character, and in the proper environment to foster it. In New York, particularly in the city of New York, the work of the Committee on Character is of the utmost importance. Its scope was extended by the last legislature in order to give unquestionable authority to the court rules requiring that candidates for admission to the Bar must give evidence of general fitness for the practice of law. This committee is composed of lawyers of the highest character and attainments. Their work is aided by an opportunity to learn of the conduct of the candidate in surroundings similar to those in which he will practice his profession. The importance of ascertaining the character and fitness of men to become lawyers is painfully demonstrated in New York City by the fact that there are constantly pending in the Appellate Division of the First Department between 100 and 200 proceedings for disbarment.

"3. This requirement has an *economic* value. In Greater New York there are 17,000 lawyers. Their average annual compensation, notwithstanding the large earnings of the principal commercial and corporation lawyers is said to be less than \$1,000. Sacrifice the number of lawyers to *fitness* and the average compensation will be increased, the temptation to "corrupt the fountain of justice at its source" will be less, and there will be fewer who will use their knowledge of the law as an instrument to promote fraud.

"That something to this end has been accomplished in New York is shown by the fact that the per cent. of rejections by the State Board of Law Examiners has increased in ten years from 30 per cent. to 57 per cent.

in 1911, and that while the population of the state has increased nearly 2,000,000 the number of applicants for admission to the Bar has decreased from an average of 922 ten years ago to 813 in the year 1911.

"4. The year of clerkship should be exclusive of all other occupations, and should be safeguarded from deception by rules similar to those in force in New York with respect to non-college graduates. It should be continuous, and not made up of vacations, which occur when the student can obtain the least advantage from experience in a law office.

"5. The year of law clerkship should be *subsequent* to a three years' course in a law school, in order that the student may understand and make practical application of the terminology and principles he has learned in law school.

"6. The year of law clerkship should be *compulsory*. The other learned professions, particularly medicine, require more thorough preparation for entrance thereto than does the law in the greater number of our states. It costs less in time and money to enter the law than to become a horse doctor or a dentist.

"7. The last and ideal requirement of a compulsory law clerkship, which should and ultimately will be realized, is that it shall follow a three years' course in law school, in which, however, due attention should still be given to the teaching of practice.

"Entrance to the law should not be too cheap or too easy. Let the rule of survival of the fittest apply, and put an end to the system by which a man can engage in commercial or industrial pursuits by day, attend law school at night, and enter the profession of the law, without having to become a real lawyer, and liable soon to yield to the ever-present temptation to make his little learning a dangerous thing, and to cause the law to become in his hands the 'sword of oppression,' instead of 'the shield of innocence.'

XII

Candidates for admission shall present themselves prepared for examination in the following subjects: Constitutional law, including the constitutions of the United States and . . . (the candidate's state), equity, the law of real and personal property, evidence, decedents' estates, landlord and tenant, mortgages, contracts, partnership, corporations, crimes, torts, agency, sales, negotiable instruments, do-

mestic relations, common law pleading and practice, federal and state practice, conflict of law, professional ethics, the federal statutes relating to the judiciary and to bankruptcy, and the development in . . . (the candidate's state) of the principles of the law, as exemplified by the decisions of its highest Appellate Court and by statutory enactments.

This proposition in the above form was approved at the 1909 meeting of the Section. 34 A. B. A. Rep. 765. The replies since received by the committee indicate almost unanimous approval. A few suggestions as to amendments have been made, which will be found set forth in full in the report of the committee in 37 A. B. A. Rep. 874-877.

XIII

Names of all candidates for admission should be published by the Board for three days in succession, at least ten days before the examination, in a newspaper of general circulation throughout the state, and for four weeks in a law periodical, should there be one within the state jurisdiction. A similar publication should be made of the names of the candidates passed at the examination and at least ten days before the State Board's certificates are issued to the candidates.

This proposition was approved at the 1909 meeting of the Section. 34 A. B. A. Rep. 765. The opinions received since that time indicate almost universal approval. Two objections, however, are set forth in full in 37 A. B. A. Rep. 878, 879.

XIV

From the examination fees received the members of the State Board shall receive such compensation as the high-

est Appellate Court of the state may from time to time by order direct.

This proposition was approved at the 1909 meeting of the Section. 34 A. B. A. Rep. 765. Of the opinions since expressed to the committee, more than 85 per cent. are unqualifiedly in favor of the proposition in its present form. The opinion, however, has been expressed that the compensation should be paid by the state. These views will be found set forth in 37 A. B. A. Rep. 879, 880. It may be doubted, however, if this would be wise, as it is important as far as possible to keep all matters relating to admission to the Bar free from legislative interference or control.

XV

The fee for examination for admission shall be \$25, and for passing upon registration credentials in the matter of general educational qualifications, \$5.

This proposition was disapproved at the 1909 meeting of the Section. For the debate thereon, see 34 A. B. A. Rep. 765, 766. Fifty-seven per cent. of those expressing their opinion to the committee since that time are against the proposition as stated above. Quotations of opinion upon the subject will be found at 37 A. B. A. 881.

In considering this subject, it is inter-

esting to observe that in England a candidate for admission as a solicitor must affix an eighty pound stamp to his preliminary examination certificate before he may be registered as a student.

XVI

The State Board shall consist of five members of the Bar, no one of whom shall receive student candidates in his office in preparation for call to the Bar, or be connected with the faculty or governing body of any law school presenting candidates for admission.

This proposition was approved in 1909 by the Section. For the debate, see 34 A. B. A. Rep. 766, 767.

Of those replying to the committee's 1910 request for criticisms, about 85 per cent. approve the proposition in the form stated; but a number of expressions of opinion *pro* and *con* will be found in 37 A. B. A. Rep. 882-885.

On behalf of the committee we again ask all having criticisms of any of the propositions in their present form to voice their opinions as an aid to the committee in its deliberations, addressing their views to the Secretary of the Section, Professor Charles M. Hepburn, Indiana University School of Law, Bloomington, Indiana.

The Canons of Legal Ethics

[NOTE: At the annual meeting of the American Bar Association in 1905, held at Narragansett Pier, R. I., the following resolution was adopted:

"Resolved, That a committee of five be appointed, of which the retiring President shall be Chairman, to report at the next meeting of this Association upon the advisability and practicability of the adoption of a code of professional ethics by this Association."

In the following year, at the St. Paul meeting of the American Bar Association, this committee reported that in its opinion the adoption of such a code was not only advisable, but, under existing conditions, of very great importance, especially in America, "where justice reigns only by and through the people under forms of law." It further reported that "the adoption and promulgation of a code of ethics by the American Bar Association is entirely practicable," and recommended the appointment of a committee of nine to report a "series of canons of professional ethics in the form of a code suitable for adoption and promulgation by the Association."¹ This new and enlarged committee consisted of Henry St. George Tucker, of Virginia, James G. Jenkins, of Wisconsin, William Wirt Howe, of Louisiana, Francis Lynde Stetson, of New York, Ezra R. Thayer, of Massachusetts, Franklin Ferriss, of Missouri, Thomas H. Hubbard, of New York, Frederick V. Brown, of Minnesota, and Lucien Hugh Alexander, of Pennsylvania. An elaborate preliminary report was made by it in 1907, at the meeting in Portland, Maine,² when the membership of the committee was enlarged, at its own request, so as to include Mr. Justice Brewer, of the District of Columbia, Mr. J. M. Dickinson, of Illinois, Mr. Alton B. Parker, of New York, Mr. George R. Peck, of Illinois, and Mr. Thomas Goode Jones, of Alabama.

In the following year, at the Seattle meeting of the Association, the committee made its final report, presenting a preamble, thirty-two "Canons of Ethics," and the "Lawyer's Oath of Admission."³

On motion, the canons were taken up one by one, in a session of the whole Association, and considered and voted on separately. The discussion brought out some diversities of view. After considerable debate the thirteenth canon, relating to contingent fees, was

modified.⁴ But, with this exception, the thirty-two canons, with their preamble and the oath of admission, were, in the end, adopted as proposed.⁵ The whole code, as thus adopted by the American Bar Association in 1908, is given below.

I. PREAMBLE

In America, where the stability of courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the republic, to a great extent, depends upon our maintenance of justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.

II. THE CANONS OF ETHICS

No code or set of rules can be framed which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life. The following canons of ethics are adopted by the American Bar Association as a general guide, yet the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned.

⁴ As originally proposed, this canon read as follows: "Contingent fees lead to many abuses, and where sanctioned by law should be under the supervision of the court." See A. B. A. Reports, vol. 23, p. 579.

⁵ The interesting discussion, in the general meeting of the Association, upon these Canons of Ethics, will be found in the A. B. A. Reports (1908), vol. 23, pp. 55-86.

¹ See A. B. A. Reports (1906), vol. 22, p. 600, where the report is given in full.

² See A. B. A. Reports, vol. 31, pp. 61-64, 676-736.

³ See A. B. A. Reports, vol. 33, pp. 567-586.

1. *The Duty of the Lawyer to the Courts*

It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

2. *The Selection of Judges*

It is the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness in the selection of Judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the Bench; and it should strive to have elevated thereto only those willing to forego other employments, whether of a business, political or other character, which may embarrass their free and fair consideration of questions before them for decision. The aspiration of lawyers for judicial position should be governed by an impartial estimate of their ability to add honor to the office and not by a desire for the distinction the position may bring to themselves.

3. *Attempts to Exert Personal Influence on the Court*

Marked attention and unusual hospitality on the part of a lawyer to a Judge, uncalled for by the personal relations of the parties, subject both the Judge and the lawyer to misconstructions of motive and should be avoided. A lawyer should not communicate or argue privately with

the Judge as to the merits of a pending cause, and he deserves rebuke and denunciation for any device or attempt to gain from a Judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the Judge's station, is the only proper foundation for cordial personal and official relations between Bench and Bar.

Note: See Question and Answer No. 34, post, p. 507.

4. *When Counsel for an Indigent Prisoner*

A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts in his behalf.

5. *The Defense or Prosecution of Those Accused of Crime*

It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound by all fair and honorable means to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law.

The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible.

6. *Adverse Influences and Conflicting Interests*

It is the duty of a lawyer at the time of retainer to disclose to the client all the

circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

Note: See Questions and Answers Nos. 5, 20, 22, 28, 33, 35, and 44, post, pp. 498, 502, 503, 505, 506, 507, 509.

7. Professional Colleagues and Conflicts of Opinion

A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A lawyer should decline association as colleague if it is objectionable to the original counsel, but if the lawyer first retained is relieved, another may come into the case.

When lawyers jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His decision should be accepted unless the nature of the difference makes it impracticable for the lawyer whose judgment has been overruled to co-operate effectively. In this event it is his duty to ask the client to relieve him.

Efforts, direct or indirect, in any way to encroach upon the business of another lawyer, are unworthy of those who should be brethren at the Bar; but, nevertheless, it is the right of any lawyer, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful counsel, generally after communication with the lawyer of whom the complaint is made.

Note: See Questions and Answers Nos. 11, 17, and 21, post, pp. 500, 502, 503.

8. Advising Upon the Merits of a Client's Cause

A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. The miscarriages to which justice is subject, by reason of surprises and disappointments in evidence and witnesses, and through mistakes of juries and errors of Courts, even though only occasional, admonish lawyers to beware of bold and confident assurances to clients, especially where the employment may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.

9. Negotiations with Opposite Party

A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law.

Note: See Question and Answer No. 25, post, p. 504.

10. *Acquiring Interest in Litigation*

The lawyer should not purchase any interest in the subject-matter of the litigation which he is conducting.

11. *Dealing with Trust Property*

Money of the client or other trust property coming into the possession of the lawyer should be reported promptly, and except with the client's knowledge and consent should not be commingled with his private property or be used by him.

Note: See Question and Answer No. 7, post, p. 499.

12. *Fixing the Amount of the Fee*

In fixing fees, lawyers should avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means, should receive special and kindly consideration.

In determining the amount of the fee, it is proper to consider: (1) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other business while employed in the particular case or antagonisms with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the char-

acter of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.

13. *Contingent Fees*

Contingent fees, where sanctioned by law, should be under the supervision of the court, in order that clients may be protected from unjust charges.

14. *Suing a Client for a Fee*

Controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services; and lawsuits with clients should be resorted to only to prevent injustice, imposition or fraud.

Note: See Questions and Answers Nos. 15 and 18, post, pp. 501, 502.

15. *How Far a Lawyer may Go in Supporting a Client's Cause*

Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause.

It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause.

The lawyer owes "entire devotion to the interest of the client, warm zeal in

the maintenance and defense of his rights and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicanery. He must obey his own conscience and not that of his client.

Note: See Questions and Answers Nos. 2, 10, 12, 26, 30, 37, and 39, post, pp. 497, 500, 505, 506, 507, 508.

16. *Restraining Clients from Improprieties*

A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards Courts, judicial officers, jurors, witnesses and suitors. If a client persists in such wrong-doing the lawyer should terminate their relation.

Note: See Questions and Answers Nos. 9 and 27, post, pp. 499, 505.

17. *Ill Feeling and Personalities Between Advocates*

Clients, not lawyers, are the litigants. Whatever may be the ill feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanor toward each other or toward suitors in the case. All personalities be-

tween counsel should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should also be carefully avoided.

Note: See Question and Answer No. 41, post, p. 508.

18. *Treatment of Witnesses and Litigants*

A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client cannot be made the keeper of the lawyer's conscience in professional matters. He has no right to demand that his counsel shall abuse the opposite party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.

Note: See Question and Answer No. 43, post, p. 509.

19. *Appearance of Lawyer as Witness for His Client*

When a lawyer is a witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in Court in behalf of his client.

Note: See Question and Answer No. 28, post, p. 505.

20. *Newspaper Discussion of Pending Litigation*

Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the

Courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An *ex parte* reference to the facts should not go beyond quotation from the records and papers on file in the Court; but even in extreme cases it is better to avoid any *ex parte* statement.

21. Punctuality and Expedition

It is the duty of the lawyer not only to his client, but also to the Courts and to the public, to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

22. Candor and Fairness

The conduct of the lawyer before the Court and with other lawyers should be characterized by candor and fairness.

It is not candid or fair for the lawyer knowingly to misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a text-book; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed; or in argument to assert as a fact that which has not been proved, or in those jurisdictions where a side has the opening and closing arguments to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

It is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.

A lawyer should not offer evidence, which he knows the Court should reject, in order to get the same before the jury by argument for its admissibility, nor

should he address to the Judge arguments upon any point not properly calling for determination by him. Neither should he introduce into an argument, addressed to the Court, remarks or statements intended to influence the jury or bystanders.

These and all kindred practices are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding in the administration of justice.

Note: See Questions and Answers Nos. 6 and 40, post, pp. 498, 508.

23. Attitude Toward Jury

All attempts to curry favor with juries by fawning, flattery or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the Court out of the jury's hearing. A lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause.

24. Right of Lawyer to Control the Incidents of the Trial

As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite lawyer to trial when he is under affliction or bereavement; forcing the trial on a particular day to the injury of the opposite lawyer when no harm will result from a trial at a different time; agreeing to an extension of time for signing a bill of exceptions, cross-interrogatories and the like, the lawyer must be allowed to judge. In such matters no client has a right to demand that his counsel shall be illiberal, or that he do anything therein repugnant to his own sense of honor and propriety.

25. *Taking Technical Advantage of Opposite Counsel—Agreements with Him*

A lawyer should not ignore known customs or practice of the Bar or of a particular Court, even when the law permits, without giving timely notice to the opposing counsel. As far as possible, important agreements, affecting the rights of clients, should be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made because it is not reduced to writing, as required by rules of Court.

Note: See Question and Answer No. 31, post, p. 506.

26. *Professional Advocacy Other Than Before Courts*

A lawyer openly and in his true character may render professional services before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the Courts; but it is unprofessional for a lawyer so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding to influence action.

27. *Advertising, Direct or Indirect*

The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. This cannot be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not per se improper. But solicitation of business by circulars or advertisements, or by personal communications or interviews, not warranted by

personal relations, is unprofessional. It is equally unprofessional to procure business by indirection through touters of any kind, whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer. Indirect advertisement for business by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the lawyer's positions, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable.

Note: See (on advertising) Questions and Answers Nos. 1, 3, 4, 23, 32, and 45, post, pp. 497, 504, 506, 510; (on solicitation) Questions and Answers Nos. 14, 16, 18 and 46, post, pp. 501, 502, 510.

28. *Stirring up Litigation, Directly or Through Agents*

It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of blood, relationship or trust make it his duty to do so. Stirring up strife and litigation is not only unprofessional, but it is indictable at common law. It is disreputable to hunt up defects in titles or other causes of action and inform thereof in order to be employed to bring suit, or to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases to his office, or to remunerate policemen, court or prison officials, physicians, hospital attachés or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, the sick and the

injured, the ignorant or others, to seek his professional services. A duty to the public and to the profession devolves upon every member of the Bar, having knowledge of such practices upon the part of any practitioner, immediately to inform thereof to the end that the offender may be disbarred.

29. Upholding the Honor of the Profession

Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the Bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the Bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education. He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice.

Note: See Questions and Answers Nos. 19, 24, 29, 36 and 38, post, pp. 502, 504, 506, 507, 508.

30. Justifiable and Unjustifiable Litigations

The lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong. But otherwise it is his right, and, having accepted retainer, it becomes his duty to insist upon the judgment of the Court as to the legal merits of his client's claim. His appearance in Court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination.

31. Responsibility for Litigation

No lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment. Every lawyer upon his own responsibility must decide what business he will accept as counsel, what causes he will bring into Court for plaintiffs, what cases he will contest in Court for defendants. The responsibility for advising questionable transactions, for bringing questionable suits, for urging questionable defenses, is the lawyer's responsibility. He cannot escape it by urging as an excuse that he is only following his client's instructions.

32. The Lawyer's Duty in Its Last Analysis

No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer

will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

Note: See Question and Answer No. 48, post, p. 514 (as to division of fees).

III. OATH OF ADMISSION

The general principles which should ever control the lawyer in the practice of his profession are clearly set forth in the following Oath of Admission to the Bar, formulated upon that in use in the state of Washington, and which conforms in its main outlines to the "duties" of lawyers as defined by statutory enactments in that and many other states of the Union—duties which they are sworn on admission to obey and for the willful violation of which disbarment is provided:

I DO SOLEMNLY SWEAR:

I will support the Constitution of the United States and the Constitution of the State of

I will maintain the respect due to the Courts of Justice and judicial officers.

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land.

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the Judge or jury by any artifice or false statement of fact or law.

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval.

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged.

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. So HELP ME GOD.

Note: See Question and Answer No. 13, post, p. 501.

Practical Activities in Legal Ethics

Correctional Methods in New York

THE Association of the Bar in the City of New York, numbering about 2,100 members, has what is undoubtedly the most active Grievance Committee in the United States; its diligence probably exceeds that of all other such committees in the United States combined. The New York County Lawyers' Association, with 3,100 members, has hit upon the further expedient,

which I shall explain later, of trying prevention rather than correction and penalizing. It has an efficient Discipline Committee, which does a similar work to the Grievance Committee of other associations, but less of it for lack of resources, for it is the younger and poorer of the two Associations. But as it lacks the resources for vigorous prosecution, it has turned its attention largely to ethical education of the Bar, as I shall tell you. This Association has a special

committee on the unlawful practice of the law, which has laid out for itself a programme to pursue those who falsely pretend to practice law, including those who have no legal right to practice, but who do so, nevertheless, and also those who, being notaries public, impose on the ignorant foreigner by the misleading likeness of their official name to the notaries of other countries. The Membership Committee of this Association has undertaken incidentally the task of weeding out those who publicly posed as lawyers and who had never been admitted to practice. Of these it found 650, or more than 5 per cent. of the entire Bar, whose activities it apparently, if not verily, suppressed.

This era of reform began with the institution of uniform Bar examinations throughout the state, which gradually became more searching, and were accompanied by a stricter scrutiny of the qualifications of those applying for examination. Then came greater activity and greater efficiency of the Grievance Committee of the City Bar Association, which has become a real power for good in cleansing the Augean stables of the condition which it found. This era began with it, when it happily occurred to some one to suggest the employment on a salary of regular counsel to prepare cases upon the complaints submitted to the Grievance Committee. Some idea of the work done by this Committee now may be gained from the figures submitted in its last annual report. The nine members who volunteer their services, without compensation, held about 60 meetings during the year, more than one a week, several of them lasting throughout the day, beginning at 10 o'clock in the morning and lasting till 6 in the evening. The Committee or its counsel considered 927 complaints

against members of the Bar, and 29 complaints against the method of administering justice. The Association employs in this work five regularly retained attorneys, as well as clerks and stenographers. It affords them ample quarters in the rooms of the Association, and the work cost the Association last year \$23,000, besides the value of the room rent of two floors in one of its buildings—all a voluntary contribution made by its membership of 2,100 to the purification of the Bar. Of this sum about \$4,000 was returned by the county as the expense of successful prosecutions for disbarment. Its attorneys sifted many of these complaints and considered them ill-founded. The Committee heard 140 cases, it decided to prosecute 56, and commenced 46 prosecutions during the year. In preparing and presenting these cases it had the volunteer assistance of 15 attorneys, all of whom served without compensation. This, it will be remembered, was the activity of a single year selected for illustration.

The Discipline Committee of the County Association does a similar but less effective work, because its resources are considerably less, only about \$4,000 a year. Note that here is an aggregate sum of \$27,000 a year voluntarily devoted by lawyers to the systematic eradication of evil practices at the Bar, which ought never to have been permitted to creep in, and which are of a character to justify the carper and the novelist in their pictures of the wickedness of certain lawyers.

The actually excellent work of the Grievance Committees is well supplemented by the Courts, and particularly by the Appellate Division of the Supreme Court in the First Department having jurisdiction in New York County, and the Second Department, in

Brooklyn. The Appellate Divisions have jurisdiction over the calling of attorneys to account for professional misconduct. I addressed the New York State Bar Association last winter on the subject of Disbarment, and for that purpose considered the statistics of the subject in our state. I found that, while the reported cases of discipline at all times prior to 1900 aggregated 19, since that date, with incomplete reports for 1912, they numbered 73, and the Bar has been cleaned during that period of some of those whose practices were most flagrant.

So much for the present day correctional methods with us. The Bar is at last conscious that in New York City at least there is an alert Court, and that there are two alert and active Grievance Committees in New York County, and one in Brooklyn.¹

A Legal Ethics Clinic

BUT the purely educational and preventive measures strike me as calculated ultimately to be also promotive of great good. These include the requirements of the Court of Appeals that applicants for admission shall pass a satisfactory examination upon the Canons of Ethics of the American Bar Association and of the State Bar Association (practically identical). Courses of instruction or lectures on legal ethics have been inaugurated at the Albany Law School, on the foundation of Gen.

Thomas H. Hubbard, of the American Bar Association's Committee, and at the Fordham University and the Columbia University Law Schools; character committees have been instituted, charged by the Courts with the duty of investigating the character and antecedents of those applying for admission; and last, but not least, has been established what the Illinois Law Review has happily called the Legal Ethics Clinic of the New York County Lawyers' Association. These are all recognized agencies in the recent revival of the ethical propaganda in the profession. And then there is still another agency whose progress I have watched from its start, and with whose work I am familiar, and whose influence I know to have been powerful, though unrecognized. This is a social group of lawyers and judges organized to discuss and analyze practical problems of legal ethics, which was started, and has been maintained through several winters, at the suggestion of the Director of the Society of Ethical Culture.

The most novel, and to me the most interesting, of these agencies, is the Committee on Professional Ethics of the New York County Lawyers' Association, which I have already styled the Legal Ethics Clinic. Probably most of you are acquainted with Thomas Leaming's book, "A Philadelphia Lawyer in the London Courts," and you may remember his account of the wholesome influence exercised on the English Bar, by the General Council of the Bar, in its decisions on questions of professional etiquette. That suggestion was the foundation of the power which the Committee of our Association has exercised for about two years in advising inquirers concerning questions of proper professional conduct. Anybody is privileged to address inquiries to the Committee, which it endeavors

¹ Extract from an address delivered before the Law Association of Philadelphia, on November 14, 1913, by Charles A. Boston, Esq., of the New York Bar, chairman of the Section of Legal Education of the American Bar Association, and chairman of the Committee on Professional Ethics of the New York County Lawyers' Association.

to answer in such manner as to disclose its opinion upon the practical application of the principles of ethics.

Thus far 47 formal questions have been propounded to the Committee, of which 44 have been answered, and 3 are still under consideration. Its answers are printed, published in the year book of the Association, and sent also to a mailing list of about 300, including all of the law schools and all of the legal periodicals in this country and Canada. Besides the formal questions, the Chairman of the Committee has been consulted with great frequency by persons who do not care to formulate their questions. I have been much surprised and highly gratified at the results of this experiment thus far. The grounds of the surprise are the widespread interest, the recognition which is accorded to the answers of the Committee, the character of many of the inquirers, the diversified nature of the inquiries, and their sources. Inquiries have come from Arkansas, Michigan, and Maine, as well as from local lawyers and laymen. The questions are so framed as not to disclose identities or cases, and even the members of the Committee are not advised of the identity of the inquirer. Their answers are, therefore, not biased by any personal considerations. The work of the Committee has awakened such interest that its Chairman has been invited to address his own Association, the Section of Legal Education of the American Bar Association, Columbia Law School, the New York State Bar Association, the Commercial Law League of America, the Cleveland Bar Association, and now this Association on the subject, and to contribute articles to various magazines.

Two or three surprises have arisen from the character of the inquirers: They have included established practi-

tioners of high ethical standards, who were seriously perplexed by their own problems, and desired independent and unbiased counsel; laymen who wished to regulate their own conduct toward the profession by the advice given; young men, recently admitted, who were uncertain of what is esteemed the proper course; law students, who have sought advice respecting their conduct during their student period; and men who would probably be considered by the thoughtless to be wholly outside of and indifferent to ethical influences. Indeed, one of the chief causes of gratification to me is that I have had the opportunity to see how anxious are many men in the profession, who have not had the opportunity to learn its traditions, now to find out what, in the opinion of their brother lawyers, is the proper course to pursue in an embarrassing situation. Some of these are those who would commonly be thought to be pursuing the profession as a money-making trade and without regard to its ethical demands.

The most important single work of the Committee now in sight is a series of practical questions recently formulated and presented to it, by a joint committee of the Committee on Unlawful Practice of the Law and of counsel for collection agencies in the city, intended to elicit the Committee's views upon the ethical propriety of a number of practices indulged by collection agencies and in bankruptcy matters. The Committee now has under consideration this question, which includes 33 specific interrogatories, upon as many different practices regarded by the Committee which framed them to be of doubtful propriety.

Although the Cleveland Bar Association has recently inaugurated a some-

what similar Committee, the actual work of our Committee is, I believe, unique on this side of the water, and therefore, I think, merits a detailed consideration in this address. An analysis of the questions already answered will show many problems confronting members of the profession or those interested in its welfare. It may not be inappropriate to make such an analysis, and to show a few of the additional matters upon which the Chairman has been consulted, without formal presentation of a question to the Committee.

The questions illustrate the advantage of having some advisory body, whose views may prevent the commission of an offense and its punishment, or may discourage practices that, while they might injure the profession in public esteem, or its members by derogation from high character, might not be of such serious nature as to be brought before a disciplinary body. It is therefore, I believe, destined to be a strong educational force in illustrating the practical application of the principles and sound traditions of legal ethics.²

The Questions and Answers of the New York County Lawyers' Association Committee on Professional Ethics

ANNOUNCEMENT: APRIL 24, 1913—
PRACTICE OF THE COMMITTEE

AN ATTORNEY has complained to the Committee that he considers that one of the questions which it has answered related to him, although his

name was not disclosed or indicated therein, and that the question does not contain a full statement of the circumstances. He considers that if the circumstances had been fully stated they would have led to a different answer. He asks that the Committee print some statement to correct the imputation of its disapproval of his conduct, which was based upon what, he insists, was only a partial and misleading statement of the circumstances.

The Committee desires it to be known that the questions upon which it acts from time to time are submitted to it without the disclosure of the identity of the inquirers, or of any persons whomsoever to which the questions relate, nor does such identity appear upon the Committee's minutes, nor affect its consideration of questions, to which it endeavors to make application of the principles of professional ethics. In order that its efficiency may continue, the Committee deems it improper to depart from its rule of anonymity. Its answers are based upon the specific facts submitted to it, and without allowing any influence of personality or undisclosed circumstances to affect its judgment. It would be altogether impracticable for the Committee to institute an investigation into the undisclosed facts of the cases submitted to it for its advice. It deals only with the facts presented in the specific questions submitted, and cannot ask for the presentation of evidence.

The Committee never wishes to be understood by the profession or the public as condemning any individual. It is not a Grievance Committee, and it entertains no complaints against individuals, and in answering questions deals solely with the facts upon which its opinion is asked. Its answers should never be construed by the profession or the

² A further extract from Mr. Boston's address before the Law Association of Philadelphia. The passage here given follows immediately upon that given in the previous extract.

public as intended to condemn or disapprove any individual.

To avoid any possible misunderstanding, the Committee has directed that hereafter its published answers shall be preceded by the following: "It is understood that this Committee acts upon specific questions submitted ex parte, and in its answers bases its opinion on such facts only as are set forth in the question."

1. Question: A member of the Bar submitted to the Committee a simple business card containing his name, profession, office address and telephone number, and asked the Committee whether the insertion of such a card in a trade journal would be deemed unethical.

Answer: The form of advertisement proposed by you cannot be characterized as unprofessional, but its adoption must be left to the sense of propriety of the individual practitioner. The Committee, however, does not approve of such form of advertisement.

2. Question: I am attorney for one Mrs. A. On January 2d, I commenced proceedings against her husband in the Magistrates' Court, which resulted in his being placed under bond to pay his wife the sum of \$5.00 per week. On the trial of this proceeding it developed that the husband had obtained a decree of divorce in Nevada, and that he had remarried. I have learned from reliable sources that prior to the second marriage the second Mrs. A. had been living with Mr. A., and that the said second wife had knowledge of the first marriage. I have been instructed to bring suit for alienation of affections, and in such suit it will be necessary to prove knowledge on the part of the second wife of the first marriage, and also cohabitation. My client is unable to pay for the detective services necessary, and I have a private detective who is willing to make search for the witnesses upon a contingency; that is, a percentage of any sums that may be recovered. My associates here seem to think that such an agreement would contravene the rules of ethics. I have spoken to Mr. B., who seems to think that there is nothing inherently bad in the agreement; but he has referred me to you for authoritative opinion.

Answer: The inquirer should be advised that this Committee disapproves the course suggested in the question submitted.

3. Question: An attorney directed the attention of the Committee to the following advertisement:

"WANTED—In collection business I started, an attorney as associate and outside man to

call on trade for business, a hustler; percentage of profit. Box ———, this office."

The attorney expressed the view that such advertising should be discouraged and invited the action of the Committee.

Answer: The Committee agreed with the view that such advertising should be discouraged, and concluded that its proper action would be to call the attention of the periodical to the Committee's view. It addressed the editor as follows:

"The Committee believe that it would be for the benefit of the Bar at large if this sort of advertising were discouraged, and have after careful deliberation decided to call this advertisement to your attention, not at all with any idea of interfering with your business or attempting to dictate the policy of your paper, but merely for your information, in the belief that you would gladly co-operate with them in any form of action intended to raise the ethical standing of the Bar. The matter is therefore respectfully submitted to you for your consideration."

The Committee, through its Secretary, was subsequently advised that the periodical in question would do all in its power to prevent such advertisements from appearing in the future.

4. Question: An inquirer submitted the letter given below, and asked in substance whether it is proper professional practice for a lawyer to procure business through the systematic efforts of a client, at the instigation of the lawyer, by means of letters sent out by the client in behalf of the lawyer, urging the employment of the latter by other persons engaged in the same business as the client.

"Dear Sir: For some time past our entire legal business has been handled by the firm of A. B. & C., who act as our attorneys and general counsel on a very moderate annual retainer. Our relations with this firm have been so agreeable and their services and terms so satisfactory to us that we have decided to bring their plan of legal service to your attention, in the hope that we may thereby aid them to increase their clientele.

"Under our contract with this firm all our legal work, however large or small, is promptly and efficiently cared for, and we have the privilege of consultation and advice at all times, either at their office or our own. Their retainer is divided into quarterly installments, payable at the end of each quarter year. In this way our legal work becomes practically a fixed charge and may be anticipated among other operating expenses. This feature, as well as the promptness, efficiency and convenience of the service, the low cost and the businesslike methods pursued, appeals to us very strongly and we feel that other business men would gladly avail themselves of the services of this firm, if these advantages were pointed out. In fact, we are advised that within the past year some

twenty-five large firms and corporations have retained this firm on a similar basis. They employ a competent staff and their offices are among the largest and best equipped in the city. The firm is made up of four comparatively young men, each of whom is thoroughly experienced, capable and energetic.

"It would afford us satisfaction if by this means we can put them in touch with another client, and we would appreciate it very much if you would take the trouble to arrange an interview at your office, with a member of their firm.

"Yours very truly, _____."

Answer: In the opinion of the Committee such a practice is not proper.

5. Question: The attorney of record for the petitioning creditors in bankruptcy proceedings has stated on the records that he is also the attorney for the bankrupt. Will you kindly inform me whether the existence of such a fact warrants the institution of proceedings for the disbarment of such an attorney?

Answer: The propriety of instituting disciplinary measures against an attorney is exclusively the province of the Grievance Committee of this Association. However, from an ethical viewpoint, we observe that the question as presented gives us insufficient details on which to found a satisfactory judgment further than to point out the obvious evils almost inevitably resulting from attempts by an attorney to represent interests so likely to prove conflicting.

6. Question: I took a judgment in the summer of 1910 against Mr. A. I knew that he had worked for Mr. B., and supposed it was upon a commission arrangement, where his fee was contingent upon success. I got out a third party order to examine B., and he gave me an affidavit stating that he owed A. nothing.

I then examined A. in supplementary proceedings, and he stated that B. owed him nothing. Thereafter A. sued B. for a large sum of money for fees due for services rendered prior to his examination in supplementary proceedings.

The attorney for B. found my judgment on record and called upon me. I told him frankly all I knew, and told him about the affidavit of A. in supplementary proceedings. When I came to think the matter over, I realized that if I aided B. in his defense and enabled him to succeed in defeating A.'s claim, as it seemed likely the papers in my possession would do, I would probably never be able to collect anything from A., whereas, if I aided A., he might get a judgment which would be good and I might therefore succeed in collecting my judgments.

I talked the matter over frankly with B.'s attorney. We agreed that it was not fair that I should take the whole risk, and that

B. ought to have the assistance of the documents in my possession. B.'s attorney said he thought B. ought to share the loss with me on some fair basis, and as I have four claims against A., only two of which are in judgment, that B. ought to purchase some of them.

The question arose then between us as to the bearing of any ethical principles involved. Neither of us is willing to take any action knowingly or intentionally which will subject us to criticism. However, if some such arrangement cannot be honorably made, it leaves one of us in the position where he is likely to suffer unfairly.

The lawyers with whom I have talked, with one exception, have said that there is no question of ethics involved, that I am the owner of property which I am entitled to use in any way I see fit, and to sell to whomever I please, regardless of the effect of such sale upon litigation between other parties.

The total amount involved is about \$1,500. The judgments I hold against A. are for \$500 and \$50, respectively, with interest and costs. My own wish would be to sell the claims not in judgment to B. and to proceed against A. to punish him for contempt, or secure in the City Court an order fining him the amount of the judgment. I might in that way collect probably all that is due me, and it seems to me and to those I have consulted to be a fair and honorable proceeding.

The evidence which I would furnish would all be documentary, as I cannot add anything to what they now have except the affidavit referred to, notes, etc. There is, therefore, no temptation to subornation of perjury.

I submit this to you and your Committee, in the hope that you can clear up what doubt there is in the matter, and I beg to thank you most sincerely for your opinion.

It is much better for us attorneys to take these matters up before action than to be subjected to unfavorable criticism afterwards.

A prompt answer is quite desirable, because A.'s case against B. will come on for trial in about ten days.

Answer: The following reply should be made:

This Committee, understanding that the inquirer is himself the judgment creditor, deems it unprofessional in general for a lawyer to demand compensation as the condition of a disclosure by him of information to prevent recovery upon a claim which the claimant has sworn does not exist.

But the question as framed appears to us to preclude the possibility that a purchase of the claim is exacted as a condition of the disclosure because such disclosure has already been freely made; and, therefore, the Committee does not regard the transaction as open to any criticism:

Provided, the inquirer does not follow the

realization (from B. upon his claim in order to defeat A.'s claim) by proceeding against A. for contempt on the inconsistent theory that A. nevertheless has a valid claim against B.

7. Question: (1) Is an attorney entitled to retain moneys in payment of disbursements when said moneys were received by him in another matter in which he appeared as attorney for the same client, and assuming that the client has not agreed to allow the attorney to retain same?

(2) Is an attorney entitled to retain moneys expended for disbursements, which moneys were received in the same matter in which the disbursements were had?

(3) Where the original matter in which the expenses are made is one involving a collection, and something is received by the attorney, is he entitled to retain what he has received on account of disbursements had therein?

Answer: In the opinion of the Committee in each case suggested, the attorney is entitled to retain the amount of money so expended for disbursements, but subject, in case of objection by the client, to a judicial determination of the reasonableness and propriety of the disbursements and the right of the attorney to so apply the moneys, but that the attorney should not make such an application of the withheld funds for his own purposes as to preclude or endanger their return in whole or in part if the question be determined against him by a competent court.

8. Question: Whether it is proper professional conduct for attorneys to solicit employment by the use of literature such as the following:

"Dear Sir: We submit to you herewith a form retainer setting forth the plan under which we are employed as attorneys and general counsel by many large and small firms and corporations.

"We would appreciate the privilege of an appointment with you at your office or ours, to explain the moderate terms and the advantages of this arrangement.

"Yours very truly, _____."

"Retainer.

"Dear Sirs: We hereby retain you as our attorneys and general counsel in New York City in connection with any and all legal matters which we may refer to you, for the term of _____ years from the date hereof, at an annual compensation for all legal services hereunder of _____ dollars (\$_____), payable in equal quarterly installments at the end of each quarter-year.

"We understand that within the term hereof we are to have the right to call upon you for all legal services of every kind and nature in and about our regular business, including all matters of litigation and negotiation, and we are to have the privilege of con-

sultation and advice at all reasonable times.

"In the event that any member or representative of your firm is required to leave New York City in connection with our legal business, we agree to pay you additional compensation for such service at the rate of _____ dollars (\$_____) per day for each day or part of a day so actually and necessarily spent outside said city.

"After the expiration of the term herein limited, the arrangement herein set forth shall continue until terminated upon thirty days' written notice by either party to the other.

"This retainer shall take effect upon your acceptance hereof in writing.

"Yours respectfully, _____

"By _____,

"Note.—We do not desire to displace by our proposition any existing satisfactory relation."

Answer: This method of solicitation of employment by members of the Bar is unworthy, does not conform to the ethical standards of our profession, and should be condemned.

9. Question: A. v. X. A.'s claim is undoubtedly dishonest, but serious difficulties will be encountered by X. in his defense. Y. has knowledge of certain material facts and is also in possession of certain documentary evidence which, without the slightest difficulty—by simply affixing or withholding his signature—could be used to aid A. or to strengthen X.'s defense. Y. is evidently a person not affected by conscientious scruples as to the sanctity of an oath. He has a claim of \$_____ against S., a person closely related to A., and has made an offer to B., defendant's attorney, to withhold his signature from said papers and to testify for the defendant if his claim against S. is fully paid by X. B. refuses to dicker with Y., and tells Y. that he will have none of his offers. B. feels that he is perfectly right in the matter, deeming the acceptance of such an offer absolutely and unqualifiedly unethical, immoral, and dishonest.

So far, so good. But now, what about X. and his interests? Is it B.'s duty to divulge to him the foregoing facts, he being ignorant thereof at this time? And, if X., upon learning these facts, should decide that his interests would best be served by accepting Y.'s offer, what attitude should B. assume? Under no circumstances will B. make a deal with Y., with or without instructions from X. Then, should B. withdraw from the case if X. does not agree with him as to the moral turpitude involved in making a deal with Y.?

Further, Y. being willing to aid A. upon the same terms, should that fact have any weight? Would X. be justified, under these circumstances, B. refusing to dicker with Y., in bowing to the inevitable and committing

an obviously immoral act, although probably necessary to an otherwise absolutely honest defense?

Lastly, if your Committee is of the opinion that the foregoing matter should be brought to X's attention by B., and X. should accept Y's offer against B's wishes, would not B. be justified in refusing further to conduct X's defense? B. feels that he should not wink at such obviously nefarious and immoral conduct on Y's part and on X's possibly favorable attitude toward Y's offer. Is not B. right?

Kindly treat this matter as though it were impossible to obtain evidence of the numerous crimes involved.

Answer: Neither the interests nor instructions of clients justify their lawyers in countenancing or utilizing corrupt practices. A lawyer is under no duty to submit to his client for his decision a proposition in fraud of justice. A mere difference of view between lawyer and client does not require the lawyer to withdraw. Under the circumstances suggested, the lawyer should not assist his client to avail himself of the corrupt activities of another. If so instructed by a client who will not be persuaded, in the opinion of the Committee he is justified in withdrawing from the cause.

10. Question: Is an attorney justified in asking for five thousand dollars damages in a case where he knows his client would be perfectly satisfied with a settlement of a few hundred dollars and where there appears to be no just ground for demanding more than a few hundred dollars?

Is a lawyer guilty of moral turpitude who demands in settlement of a claim for damages an amount far in excess of what he believes to be a proper measure of damages?

Answer: The Committee considered, in the absence of a more detailed statement, that the demand should not exceed what, in the opinion of the attorney, would be a maximum proper recovery under the facts which he has reason to believe are the basis of his client's rights.

11. Question: Several years ago I received into my office as a student of law a young man who has since been admitted as a member of the Bar. I assisted him to the best of my ability in his preparations for admission, and commended him to the Character Committee. He was intimately familiar with the affairs of my office, and had my confidence. After his admission to the Bar he left my office and became associated with another member of the Bar.

While he was a student in my office I had a client who employed me in a professional capacity in numerous matters, among others the reorganization of a company, whose books he entrusted to my custody for the purpose. This client, at the time of the proposed re-

organization, owed me considerable money in other matters in which I had been employed for him personally. I spent considerable time in planning the reorganization, but declined to advance any disbursements therefor. Finally my client, without discharging any of the indebtedness to me for my services in respect to the said reorganization or for my personal services to him, demanded the return of the books of the corporation, which I declined to return unless some money should be paid to me on account of the debt. I have since been served with an order to show cause in the Supreme Court on an affidavit of my client sworn to before my former student as a notary public, in which the said former student appears as attorney of record for my client, directing me to show cause why I should not turn over the books of the company to it.

I charged the company what I deemed a reasonable fee for the services rendered to it, all of which were rendered while the student was a clerk in my office. I assume that, as the student appears as attorney of record, he prepared the affidavit upon which the order to show cause was made, and in which the client swears that nothing whatever is due to me for legal services rendered. The student has also in a replying affidavit made by himself stated that he was not consulted when the client called on me, though he saw the client visit me on several occasions, but was never informed regarding the subject of the consultation. Notwithstanding this affidavit, he had charge of the filing of all my papers, and had access to all of my correspondence, and was in a position to be generally familiar with the business of my office.

Is the conduct of the student as stated by me in appearing for my former client, under the circumstances, and taking the steps indicated, contrary to any principles of professional ethics?

Answer: In the opinion of the Committee it contravenes proper professional ethics for an attorney to accept a retainer against his former employer involving matters of which he might have obtained knowledge while in such employment, and by reason thereof.

12. Question: A. defended a divorce action brought against X., against whom a decree of absolute divorce was rendered in New York state. The final decree having been signed, and X. desiring to marry the co-respondent, sought the advice of A. as to how this could be done by her without incurring any penalty in the state of New York. A. advised her to go to Connecticut and marry there, and furthermore accompanied her and the co-respondent to Connecticut and "gave her away."

Do you consider that A. has done anything which should subject him to censure?

Answer: The question involves two inquiries. The first relates to the lawyer's duty to his client, to wit:

(1) Is the lawyer censurable for having advised his client that she might lawfully proceed contrary to the letter of the decree?

The second involves the lawyer's duty to the profession and perhaps to the court and to the community:

(2) Is he censurable for having facilitated and taken part in a marriage ceremony which was contrary to the letter of the decree?

A minority of this Committee are firm in the conviction that the conduct of the attorney is censurable in respect to both aspects of the question.

A majority agree that:

(1) It was not improper for the lawyer, when asked to advise upon that point, to inform his client that the prohibition against the remarriage of the guilty party contained in the decree in a divorce action is a penalty which neither has, nor was intended by the Legislature to have, any effect beyond the borders of the state, and to advise her that she might contract a marriage in Connecticut which would be recognized as valid in New York, and would not be punishable as a contempt of court.

(2) The attorney's conduct in facilitating and participating in the marriage ceremony in Connecticut is likely to be misunderstood, owing to the very general misapprehension as to the scope of such a decree. For this reason such conduct tends to diminish public respect for the profession, if not for our courts and their decrees, and (unless justified by circumstances not disclosed in the question, and done with the purpose of avoiding still greater evils to follow) is open to criticism.

The Committee had before them sections 6 and 8 of the Domestic Relations Law, and cases such as *Thorp v. Thorp*, 90 N. Y. 602, 43 Am. Rep. 189, and *Van Voorhis v. Brintnall*, 86 N. Y. 18, 40 Am. Rep. 505.

13. Question: A lawyer is consulted by a client about an alleged claim of the client, and the client, upon being advised that the claim is, in the opinion of the lawyer, unfounded or not enforceable, then so conducts himself that the lawyer concludes that he has reasonable ground for believing that his client, disappointed at the advice, will commit acts of violence against a member of his family against whom the disappointed client asserted his fancied claim, and the attorney knows that the disappointed client has in the past carried out similar threats against the same individual, and the attorney concludes that the client intends to carry out his renewed threats, and the attorney knows the person threatened, members of his family, and his counsel. Is the attorney under any professional duty which would either require him

to, or preclude him from, communicating the threats, or disclosing them, or taking such steps as seem to him reasonably calculated to prevent the person who consults him from accomplishing his threatened purpose of violence?

Answer: The Committee does not consider that the privilege of professional confidence extends to such threats. It is not, therefore, in its opinion, unprofessional for the attorney to give warning.

14. Question: May I know whether in the opinion of your Committee it would be unprofessional for an attorney, who is the counsel for an association, to send out letters to a number of its members suggesting employment upon an annual retainer?

Answer: In the opinion of the Committee it is desirable that such solicitation of business should be discouraged; the Committee deems it unprofessional.

15. Question: Over a year ago a client, whom we had represented for some time, introduced to us a Mr. X., who requested us to represent him in various matters. Our relations continued on a pleasant basis for a period of several months, during which time we undertook litigation in various courts for X.

About three months ago we informed X. that we would no longer be able to act as his attorneys, unless he paid us for our services. Mr. X., who originally paid us a retainer of \$200, agreed that we were entitled to receive a sum several times that amount for services performed to the then date, and stated that he would arrange to let us have a check in a few days.

Since that time Mr. X. has studiously avoided our office and ignored all communications. We appear as attorneys for him in a number of litigated matters. We do not desire to continue to represent a client of this type. We have requested him to have other attorneys substituted in our place, but he has paid no attention to our requests. We wish to drop all of his matters, but we do not wish to be accused of having been unfaithful to the trust originally reposed in us as attorneys by the client.

We would appreciate advice from you as to the manner in which we should proceed in order to be permitted to cease acting as his attorneys.

Answer: Upon the facts as stated, the Committee does not consider that the attorneys are required by any professional obligation to continue to represent the client. It is of the opinion that a peremptory notice to the client that after a certain specified date, sufficiently far away to enable him to secure and substitute new attorneys, they will not act as his attorneys, is proper. This answer, however, does not deal with the attorneys' legal right to compensation upon taking such

course, nor with the legal procedure essential thereto.

16. Question: Is it the opinion of the Committee that members of the Bar should not resort to the solicitation of business by means of a communication in the following form?

"Gentlemen: I would like to submit a proposition to take care of all your legal matters under a yearly contract at less than your collections alone now cost; in order to make a client of you. My method is now being used by many large reputable firms and corporations in this city, to whom I would be pleased to refer you. I shall be pleased to call upon you and explain in detail.

"Very truly yours, A. B. C."

Answer: In the opinion of this Committee such solicitation of business is improper.

17. Question: A lawyer who states that he has had great difficulty in securing testimony in behalf of his client from lawyers as to the value of legal services in a litigation between the client and a former lawyer, involving that value, has applied to the Association to designate lawyers who will act as expert witnesses in his case. His application has suggested the formulation of the following question:

Is it the ethical duty of a lawyer, when called on to give testimony as an expert witness concerning the value of legal services, to testify as a witness giving his opinion of such value on a proper question submitted to him, in a litigation where it is charged that another lawyer has greatly overcharged the latter's client, or may any number of lawyers who are appealed to to give testimony respecting the value of such services, the nature and extent of which are not in dispute, decline to testify on the ground that they do not care to express an opinion adverse to a charge made by another lawyer and which is in litigation?

Answer: We are of the opinion that mere considerations of courtesy or fraternity should not deter members of the legal profession from testifying in respect to the value of legal services, when it is contended that a lawyer has overcharged or attempted to overcharge a client, and the controversy is the subject of litigation.

18. Question: Is it the opinion of the Committee that an attorney, who has received a retainer, but who has no express agreement with his client for his compensation, may properly notify his client, upon the eve of trial for which he has made preparation, that he will not appear at the trial, nor proceed further with the suit, nor consent to the substitution of another attorney, nor release any of the client's papers in his possession and essential to the proper trial of the action, unless his client pays or secures to his satisfaction the payment of a bill which he has

rendered, and which he deems reasonable compensation for his services to the date of his conditional refusal to proceed further in the cause?

Answer: The suggested conduct of an attorney upon the eve of the trial of the case for which he had been retained is unethical and should be condemned.

19. Question: (a) In settling an attachment case, the attorney for plaintiff demanded indemnity against sheriff's poundage, if any. I deposited with him \$250.00. After some years I ascertained that no poundage had been paid or claimed, and demanded the return of the money, which was refused on the ground that such claim might still be presented. I then notified the sheriff to present his claim, if any, and received a letter stating that no such claim appeared on the books of the office. I renewed my demand on the attorney for the return of the deposit. It was again refused; this time on the ground that his client was as much entitled to it as mine. The return check shows that it was indorsed by and paid to the plaintiff's attorney. Am I warranted in putting the matter before the proper Committee of the Bar and asking discipline of the attorney?

(b) Am I justified in warning the attorney that I shall adopt this course?

A suit would exhaust the fund.

Answer: In our opinion it is not proper to submit a complaint to any Committee of the Bar, or to threaten to do so, for the purpose of collecting money from a lawyer; nor is it the function of this Committee to advise lawyers whether or not to prefer charges against other lawyers.

20. Question: A foreign shipping company, by written contract, employed, as its agent in this port for a period of three years, one Maduro, agreeing that should he be discharged prior to the expiration of that time, he should be paid full salary for the remainder of the unexpired time. Maduro retained the law firm of Port & Starboard to appear for and in the name of the company in several admiralty litigations; the firm receiving its fees from funds of the company and appearing of record as its attorneys, not as attorneys of its agent. Prior to the agency's expiration, the company for alleged cause notified Maduro that it would terminate his employment and send one Colorado to succeed him. Maduro demanded full salary and a settlement of accounts before relinquishing his agency. Colorado, on arriving in this port, was served with a summons in an action brought in the state court by Maduro through Port & Starboard to recover \$33,000 of salary for the unexpired term of his agency, and found that these attorneys had also attached \$58,000 of the company's funds in bank, \$10,000 of which, however, they released to supply the company with current funds. He

also found that one of the litigations in which Port & Starboard appeared for the company was actually on trial, so that it was inexpedient to swap legal horses in crossing that stream. The company, anticipating resistance by Maduro to Colorado's assumption of the agency, cabled the day before the latter's arrival in the port to one Binnacle to represent the company in the event of such resistance.

The attention of Port & Starboard being called to the fact that they, having been sole attorneys for the company, were now appearing both for it in said admiralty litigation and against it in the state court, they replied that their action was proper; that the Admiralty Bar being limited in number, a member of it may properly appear for A. one day in his suit against B. and for B. another day in his suit against A.

The company's allegation of maladministration on the part of Maduro as a ground of his discharge necessarily involved examination, among other things, of the matters out of which arose said pending litigations in which Port & Starboard appeared for the company.

Queries: (1) Was it professional misconduct for Port & Starboard to bring an action against the company for its agent and attach the funds in bank, while at the same time acting as attorneys for the company in pending litigations at a stage when it would have been inadvisable for the company to substitute other attorneys?

(2) Are the ethical rules for the Admiralty Bar different from those applicable to the Bar at large?

(3) Does it make any difference whether the agent's action against the company involved matters that Port & Starboard had knowledge of as the company's attorneys?

(4) If the course of Port & Starboard was unprofessional, is it such a grievance as would justify discipline?

Answer: The relation of confidence implied in the representation of the company in the admiralty suits seems to us to have demanded that while it continued, the attorneys should not attach the funds of their client nor accept a retainer against it. We consider that the ethics of the profession should operate in all courts, and that the Admiralty Bar constitutes no exception. We consider the two relations as inconsistent, regardless of whether the action against the company involved matters of which the attorneys acquired knowledge in their professional relations with the company.

This Committee uniformly declines to express its views upon the propriety of disciplinary proceedings, as not within its function.

21. Question: In the separation action of Jane Doe against John Doe, there were awards of alimony and counsel fee, none of

which the defendant paid, having kept out of the state for the express purpose of avoiding these payments. The case was finally tried. The defendant did not appear, resting his defense on a Western divorce which our court set aside. The decree, among other things, gave a money judgment for some \$2,000 back alimony. There were several appeals from orders and in one instance the defendant was found guilty of contempt and fined several hundred dollars. Plaintiff's attorney served a notice of lien.

Later, the judgment of \$2,000 was sent to Philadelphia, where the defendant then was, and a suit was begun on the judgment. Thereupon the defendant entered into a collusive arrangement with his wife whereby all of the various judgments and orders directing the payment of moneys in New York were satisfied, and this satisfaction was set up in a supplemental answer in Philadelphia.

This litigation had continued for years, and the plaintiff's attorney had worked without reward, advancing large sums of money in the litigation. Several judgments for costs consisted largely of printing bills that he had paid. He even advanced moneys to keep the plaintiff from starving, as throughout the entire litigation the defendant kept out of the state and never paid one dollar either in alimony or costs.

The defendant had but one attorney through this litigation, and he was entirely familiar with the circumstances. Yet he, with a new lawyer representing the plaintiff drew this collusive agreement, which deprived the plaintiff's attorney of his lien, even for the costs made up largely of printing disbursements advanced by him.

Was this action on the part of the defendant's attorney ethical? If not, what should be done in the matter?

Answer: This Committee uniformly declines to express its views upon the propriety of disciplinary proceedings; and it does not advise persons of their property rights or the means of enforcing them. The attorney's lien and his right to reimbursement were property rights.

We do not regard it as ethically proper for an attorney to enter into or advise any collusive or other agreement to destroy any property right unjustly.

22. Question: A., an attorney, represents two creditors of C., and is desirous of filing a petition in bankruptcy against C. A. knows that B., an attorney, represents a third creditor of C., and suggests to B. that B. should have his client join with A.'s clients in signing and filing the petition in bankruptcy.

This was done under an arrangement between A. and B., with the knowledge of the clients, that if A. represents the receiver in bankruptcy the fees which A. thus receives will be divided between A. and B. Is this considered unethical?

I should like to have this question answered entirely irrespective of whether B. is to do any work or not in connection with the receivership.

Answer: The Committee does not express any view at present as to the propriety of an attorney for petitioning creditors assuming also to represent the receiver and thus sustain two-fold obligations that may conflict; yet, since in this district the federal court itself undertakes to safeguard by its special order under rule 20 the propriety of such representation in each particular case, we are of the opinion that the facts recited in the question do not alone constitute unethical conduct.

23. Question: Is it proper professional practice for an attorney and counselor of the courts of record of the state of New York to announce to the public by card that a foreign attorney, naming him, and who has not been admitted to practice as an attorney of the courts of the state of New York, has become associated with him in the practice of law, with special reference to foreign countries, stating the names of the countries?

Is such association in the state of New York for such purposes proper professional practice?

Is it proper practice for such attorneys to circulate in New York state cards in the forms below:

"ANNOUNCEMENT.

"John Doe,

"Counselor at Law,

"..... Street, New York.

"Dated, 191..

"I beg to announce that Mr. [naming foreign attorney] has this day become associated with me in the practice of the law with special reference to [mentioning foreign countries] matters.

"Card.

"[Full name of foreign attorney.]

"Counselor at Law,

"..... Street, New York."

Answer: In the opinion of the Committee, it is improper professional practice for an attorney and counselor of the courts of record of this state to announce to the public by card that a foreign attorney, naming him, who has not been admitted to practice as an attorney in the courts of this state, has become associated with him in the *practice of law*, even with special reference to specifically named foreign countries, unless the announcement to the public clearly discloses that the foreign attorney has no right and no intention to *practice* in this state. Therefore, the circulation of a card in the form submitted to us would be improper.

24. Question: Is it proper professional practice for one or more attorneys and counselors of the courts of record of the state of

New York to form a partnership in New York with a foreign attorney, not a citizen of the United States, and not admitted to practice as an attorney and counselor of the courts of record of the state of New York, the duties of such foreign attorney in such partnership being specified in the articles of partnership to be to act as counsel in New York in matters relating to the laws of foreign countries?

Is it proper professional practice for such firm to advertise, by publication in newspapers, and by sending letters and distributing printed cards in which such foreign attorney's name appears as one of the members of the firm, in such form as to convey the impression that such foreign attorney is a practitioner of law in the state of New York?

Is it proper professional practice for such partnership, in the firm name including the name of the foreign attorney, to practice as attorneys and counselors in the courts of record of the state of New York as a firm, though the foreign attorney does not appear in person before the court, or give counsel in respect to the law of the state of New York?

Is it proper professional practice for such firm to announce the formation of their partnership in the following printed announcement:

Printed Card.

"A., B. & C.

"..... Street,

"New York City.

"The undersigned announce that they have this day entered into a partnership to act as counsel in matters relating to the laws of [foreign countries].

"[Signed] A

"[Signed] B

"[Signed] C (Name of Foreign Attorney.)"

Answer: In the opinion of the Committee, the questions should be answered in the negative, because it is not proper for members of the New York Bar to enter into a law partnership with persons not qualified to practice in this state.

25. Question: Would you consider it unprofessional for a lawyer, who is the attorney for executors, about to account, to write to a large number of European legatees who are not represented by an attorney, advising them to be so represented in this county and suggesting the name of a reputable lawyer here, and inclosing a power of attorney and asking for its execution and proper acknowledgment; funds being ample to pay all such legatees in full and the attorney to receive payment thereof, and transmit to them less his stated charges for collection? All this with the view of expediting the accounting and saving time and expense in advertising the citation. And this with no expectation or understanding of division of fees or any

possible suggestion of condoning any possible irregularities in the accounting?

Answer: In our opinion, it is not proper professional conduct for a lawyer in the case stated to volunteer the name or urge the employment of an attorney to represent parties whose interests or position on the record may be adverse.

26. Question: John Doe, a lawyer, and Richard Roe, a layman, are executors of a will, the amount of the estate being about \$180,000. Doe, the lawyer, is the active executor; Roe, the layman, being passive. Both are to be allowed full commission as executors. The usual proceedings in the settlement of the estate are taken. There is no litigation. The transfer tax proceedings and the executors' accounting are conducted in the name of Jacob Fen, as attorney of record. Doe and Fen are personal friends of long standing, having had offices together for many years. Each has entire confidence in the other as a man of excellent standing at the Bar. The sum of \$3,000 for counsel fees is charged in the accounts and, in view of the work done and to be done, is a reasonable compensation for settling the estate. The papers are all drawn by Doe, on the theory that in so doing he is merely acting for Fen, the attorney of record, and not as executor. Fen appears in court whenever necessary. Doe pays to Fen, the attorney of record, \$1,000, and presents to him for his signature a voucher for \$3,000, as if it had been in fact paid to him. This is evidently on the theory that as Doe did much of the work as a lawyer, Fen is to be considered as having received \$3,000 and paid to Doe \$2,000 for doing much of the work.

Query No. 1: Can Fen properly sign a receipt for \$3,000 when in fact he only gets \$1,000, the remaining \$2,000 being really retained by Doe?

Query No. 2: Would there be any difference in the fact of the transaction, so far as the question of Ethics is concerned, if Doe were to draw an executor's check to the order of Fen for \$3,000, and Fen were then to draw his check to the individual order of Doe for \$2,000?

Query No. 3: According to the correct ethical standards, is it or is it not proper for an executor, who is a lawyer and who does legal work for the estate, which he is not bound to do and which he may properly pay another lawyer to do, to do it in the name of the other lawyer and be paid by that other lawyer?

Answer: In the opinion of the Committee, all three queries should be answered in the negative. Except where a will provides for payment to one named as executor of extra compensation for legal services, our courts uniformly refuse to allow any such compensation, for the obvious reason that a trustee or executor must have no pecuniary interest

in the legal fees he has to pay out of the trust estate. The exception above noted is based on the testator's express authority; therefore, it is not professional to accomplish by indirection what would be set aside if disclosed to the court. The concealment of the facts from the court is highly improper.

The Committee does not pass either way upon the statement that \$3,000.00 is a reasonable charge for an unlitigated administration.

27. Question: Is it proper for a lawyer to advise a client, in reply to a query seeking his advice, that in his opinion it would be better for the client to pay a fine prescribed by a certain penal statute than to obey its directions?

Answer: In the opinion of the Committee, the question should be answered in the negative.

If a lawyer in this state advises a client to do an act forbidden by law and punishable by fine, it would appear that he becomes a principal in a misdemeanor by virtue of section 2, Penal Law (Consolidated Laws of New York). (Cf. section 27.)

It is the lawyer's duty when asked to advise, to instruct the client as to the measure of the penalty prescribed by the law; but he should stop there. For the lawyer, as an officer of the law, owes a peculiar duty to the state and a duty to the profession. He violates his duty to the state when he deliberately becomes party to a crime; and violates his duty to the profession, because deliberate participation in crime by a lawyer tends to bring both the law and the legal profession into contempt.

We are not considering those cases where there is a bona fide intention to test the validity of a law.

28. Question: Recently, as a notary public, I administered an oath to a party in a matter pending in the United States Land Office. Now that party has been indicted for perjury, alleging that the matters sworn to were false. The party admits the oath, but intends to plead the truth of the statements, and can easily do so. Of course I will be a material witness for the government, although there will be no dispute over my testimony. He will admit the oath. This party desires that I represent him in his defense on the perjury charge. Can I ethically do so?

Answer: As a general principle a lawyer should not act as trial counsel in a criminal cause in which he knows or has reason to believe that he is to be a material witness for the prosecution. The question imports that in the given case the testimony of the inquirer is not in dispute, is against his client, and would be only formal. If the nature of his testimony could be assuredly so limited, the Committee would not disapprove the retainer. Except in a case where much

limitation may be confidently predicated, the retainer should, in the opinion of the Committee be refused.

29. Question: A company about to publish a periodical to be devoted to the interests of those engaged in a certain occupation desires to retain me for the purpose of giving free legal advice to its readers, the advice, however, to be limited solely to such questions as would arise by reason of the readers' occupations. This free legal advice is not to include questions which may arise by reason of personal business of any of its readers, but is to be strictly limited as above stated.

The questions are: (1) Would this company by advertising and offering free legal advice to its readers be practicing law?

(2) Would I be committing any breach of the ethics of the profession by permitting myself to be retained for the aforesaid purpose?

Answer: This Committee cannot assume to advise lawyers as to the legality of acts done or contemplated by their clients. As to the lawyer's conduct, the question submitted in our opinion necessarily involves a construction of the penal statute (section 280, Penal Law), which has yet in this connection to be judicially construed. For this reason the Committee withholds any expression of its judgment.

30. Question: Is it a breach of professional ethics for a lawyer—who knowingly permits it—to allow his client, whom he represents, to act as a "dummy" in a transaction, i. e., the making of a loan on bond and mortgage; in other words, when the application for a loan is made the property to be mortgaged stands in the name of A. & B., and when the loan is closed the mortgage is given to C.—to whom, in the meantime, the property was transferred—and two days after the recording of the mortgage the property is retransferred by C. to A. & B. (the former owners), who thereby escape liability, although the loan was in fact made to A. & B., and presumably C. was financially irresponsible?

Answer: As the question does not import that there is any deception or misrepresentation or any imposition upon any one, or that the contract is in any way unlawful, and parties are at liberty to make lawful contracts upon such terms and with such persons and upon such security as may be agreed, the Committee is of the opinion that the question discloses no breach of any lawyer's duty. The lawyer should, however, explain to his client "the dummy," the liability which he incurs.

31. Question: Is it proper professional conduct for a lawyer to repudiate an oral stipulation, by which he agreed, in return for a favor which has been granted and cannot be revoked, to admit on the trial of an action a certain fact in issue, which might,

at the time, have been proved by the issuing of a commission, but has since become difficult or impossible to prove? He contends that the promise was made without his client's express authority; that his client, learning of the promise during final preparation for trial, insisted upon its withdrawal; and that he must give his client the benefit of the court rule which makes oral stipulation unenforceable, just as it would be his duty to plead the statute of frauds in a case to which it applies.

Answer: In the opinion of the Committee, the repudiation of an oral stipulation is to be condemned. The Committee regards such conduct as improper. It directs attention also to the following decisions holding the client to be estopped under such circumstances: *Mutual Life Ins. Co. of N. Y. v. O'Donnell*, 146 N. Y. 275, 280, 40 N. E. 787, 48 Am. St. Rep. 796; *People v. Stephens*, 52 N. Y. 306, 310, 311.

32. Question: Do you deem it improper professional conduct for a lawyer to advertise for business in the following form (you will note that he does not mention his profession):

"AVOID LITIGATION.

"I act as adviser, arbitrator, adjudicator, and special confidential agent to diplomatically adjust all difficulties and disputes for individuals, corporations or heirs. Bond given when matters of trust are placed with me. Bank references. _____. Appointment by 'phone: _____."

Answer: In the opinion of the Committee, the advertisement referred to is improper, notwithstanding its opening words "Avoid Litigation."

33. Question: A. gave Mrs. C. an option on a piece of property. She threatened suit for the return of the option money. A. called on his attorney, stated the facts to him, asking him to defend him in the suit should one be brought. The lawyer agreed to do this. No payment was made for retainer, and none asked, as A. was absolutely responsible financially, and had had business relations with this attorney before under similar circumstances.

Subsequent to this, Mrs. C. saw the junior partner of this law firm, who commenced suit against A. A. called on the junior partner and protested against his taking the case against him. The junior partner pleaded justification by saying that when he commenced suit he was ignorant of any arrangement between A. and his partner, and further that there was no payment for retainer.

First: Was the junior partner justified in taking the case against A.?

Second: Could he withdraw from the suit, and, in case the suit went on, could the senior partner defend A., as per original agreement between himself and A.?

Answer: In the opinion of the Committee,

if in ignorance of A.'s relationship with the senior member the junior member took Mrs. C.'s case, there was nothing in his conduct justifying criticism; but upon discovery of the fact, each partner was disqualified from acting for either of the parties in the controversy.

34. Question: Does the Committee regard the following as proper professional conduct:

One of a firm of lawyers formerly occupied judicial position, and while a judge he delivered an opinion. After his resumption of active practice the opinion is cited by opposing counsel as controlling and in conflict with a contention made by the former judge's firm. In its brief this firm inserts the following:

"It was a member of our firm who wrote the opinion cited against us. When this matter was recently brought to his attention, he gave it as his view that the practice which we urge is proper, and the motion which we make is made with his express sanction."

Answer: In the opinion of the Committee, the reference in the brief to the present "view" or opinion is improper. It is outside the scope of allowable argument.

35. Question: A. is a member of the Bar assuming to represent a legatee under a will. He offers the will for probate at the request and procurement of the only child of the decedent, who has already, to his knowledge, announced her determination to contest and defeat the probate. It appears by frank admission of A. upon the first hearing that he will not take any active step in support of the probate, and the duty devolves upon the persons named as executors. Upon the hearing before the surrogate on the contested issues A. co-operates with the attorney for the contestant, advises with him, and assists in the contest of the will propounded by him for his client.

Does not this constitute unprofessional conduct?

Answer: In the opinion of the Committee, upon the facts as stated, A. appears to have assumed inconsistent positions in offering the will for probate and then in co-operating in contesting its probate. In the absence of any further facts, which might explain and possibly justify the apparent inconsistency, the Committee would consider that the duty of A. to his client, the legatee, should preclude him from acting as stated in the question.

36. Question: An individual engaged in the printing business, and making a specialty of case and brief printing, presents the following question:

"In the opinion of the Committee of Professional Ethics is there impropriety in my advertising in connection with my business the following: 'First Class Briefs Written for the Profession by Able Lawyers. Also Cases on Appeal Prepared'—and in my em-

ploying for my customers lawyers to write briefs and to prepare cases on appeal, making arrangements with them for their compensation by me out of the compensation received by me for the combined work of furnishing to my customers cases on appeal and briefs written by my said lawyers and printed for the use of my customers at my printing establishment?"

Answer: While this question appears to be propounded by one not a member of the profession, yet since it involves questions of "proper professional conduct," the Committee expresses its opinion as follows:

The course of action suggested would in our opinion be improper for the following reasons:

1. A printer so advertising, even if he were not violating the letter of section 270 of the Penal Law, which makes it unlawful for a person who has not been duly admitted to the Bar to practice law, would certainly be acting contrary to the spirit of that provision.

2. Section 280 of the Penal Law makes it unlawful for a corporation to furnish legal services or advice in this way. We think the principle which underlies this provision applies equally to an individual who is not a lawyer, and makes it equally improper for him to furnish legal services in this manner.

3. The relation between attorney and counsel is of a personal and fiduciary nature, and imposes obligations and responsibilities which cannot be fully realized unless the attorney and counsel deal with each other directly.

4. The relation of the writer of a brief to the Court is one the dignity and responsibility of which are inconsistent with the scheme proposed.

5. The offer by a third party, not an attorney, to furnish or sell the legal services of members of the Bar (in this case undisclosed), is derogatory to the dignity and self-respect of the profession and would tend to lower the standards of professional character and conduct.

37. Question: Mrs. O., a client of A., an attorney, informs him that she deserted her husband over three years ago; that her husband is living in the city of —, state of —, and has resided there, she believes, for a considerable period; that she is satisfied that she can never live with him again under any circumstances.

She desires A., as her attorney, to see Mr. O., to ask him if he will not institute proceedings for a divorce against her in said state of —, in which state she is informed he is entitled to a divorce on the ground of her desertion, and of which state he has been a resident for a sufficiently long time.

Is A., in accepting the retainer, and having the interview with Mr. O., guilty of unprofessional conduct?

Answer: In the opinion of the Committee,

it is not unprofessional to accept such a retainer, and there is no collusion or other impropriety in asking a husband to enforce rights which have already accrued. In view of the only too numerous scandals connected with divorce litigation, however, the Committee believes that attorneys should be particularly careful in all such cases to satisfy themselves that there has been no collusion in the prior conduct of the parties.

38. Question: Is it proper for a young man of twenty-two, who at present is completing a three-year course at law school, and has worked for about two years in a law office, but has not as yet been admitted to practice, to open an office at his place of residence and there do notarial work (he being a notary public), draw various legal papers, manage estates, collect rents and do a general real estate and insurance business?

Also state whether such a pursuit would in any way affect the standing of such a person, when applying for admission to the Bar, so that it might give the Committee on Character cause for hesitating in their approval of him?

Answer: In the opinion of the Committee, he should refrain from the business of drawing legal papers. The giving of legal advice by notaries and others who are not admitted to practice law is, in its opinion, dangerous to the welfare of the community, because such persons have not demonstrated their capacity by submitting to examinations lawfully established for practitioners of law. The Committee is not aware of any reason why he should not engage in the other employments mentioned to such extent as may not interfere with the proper completion of his law course. The Committee cannot assume to express any views for the Committee on Character.

39. Question: In an action, which, among other things, involved the validity of a real property corporation mortgage, in which plaintiff had an interest, a motion for a receiver of the property was made by plaintiff, and in opposition the attorney and president of the corporation submitted his affidavit, wherein he stated that he, in behalf of the company, had offered to pay plaintiff the interest due him on his share of the mortgage, if plaintiff would sign a suitable paper protecting the company against any loss attending such payment, and that such offer was still open to plaintiff.

Subsequently plaintiff asked said attorney and president to keep his promise and pay the interest, proffering to sign any such reasonable paper as he might exact. Whereupon said attorney and president declined to pay such interest until he could determine whether or not the company had some counterclaim against plaintiff which could be set up against the interest, and asserted that if

he determined there was such counterclaim, then such interest would not be paid.

Was not such refusal to fulfill such offer and promise improper and unprofessional?

Does not such offer and refusal amount to a deception of the court?

Answer: The Committee does not consider that it is unprofessional to withdraw an unaccepted offer, nor does it consider that its withdrawal, as stated, was a deception.

40. Question: Within twenty days after defendant had served his answer, plaintiff moved for judgment on the pleadings and the motion was submitted on written briefs, and the court took the same under consideration. Before the court had decided the motion, defendant served his amended answer, and on the last day for such service, notified the court of such action, and claimed that his amended answer superseded the pending undecided motion, and the court, so holding, declined to decide the motion.

Subsequently plaintiff moved to amend his complaint, and in opposition to that motion defendant's attorney submitted his affidavit wherein he said: "He [plaintiff] also omitted to advise the court in his affidavit that upon the pleading he now seeks to amend *he unsuccessfully moved for judgment on the pleadings* before Justice —, over four months ago."

Was not this sworn statement untrue and improper?

May it not be characterized as an attempt to deceive the court?

Answer: In the opinion of the Committee, the statement appears to be true, but not full and complete. The affiant should have fully apprised the court of the facts; his failure to do so was apt to mislead the court, and all statements likely to mislead the court, whether through design or inadvertence, should be carefully avoided.

41. Question: An action is started in a County Court of this state to recover damages resulting from personal injuries sustained by the alleged negligence of defendant, the plaintiff being represented by Attorney A. While this action is still pending, the plaintiff, through another attorney, B., commences an action in a Municipal Court of the City of New York for the same cause of action. It does not appear that Attorney B. has been informed by *his client* (the plaintiff) of the other action pending in the County Court, but the defendant interposes a demurrer to the action in the Municipal Court on the ground that there is another action pending. This demurrer is opposed by Attorney B. and is overruled on the ground that the defense of another action pending can only be raised by answer. Attorney B. collects \$10.00 costs allowed by the Municipal Court on the overruling of the demurrer, and the defendant subsequently serves a verified answer raising the point of the action

pending in the County Court, and the case is set for trial. On the trial day neither the plaintiff nor Attorney B. appear in the Municipal Court and the case is dismissed on defendant's motion.

1. Do the above facts indicate improper conduct on the part of Attorney B.?

2. Should Attorney B. ascertain from the plaintiff the fact that another action for the same cause was then pending? If he did not so ascertain, was he negligent in not doing so?

Answer: In the opinion of the Committee, the question discloses no impropriety upon the part of Attorney B., and no fact upon which negligence can be imputed to him, is stated. It would have been proper professional courtesy to notify his adversary of his intention to default, and to consent to discontinue, with his client's assent; but his failure to do so was not professional misconduct.

42. Question: A. is a practicing attorney in this state. B. is a member of the Bar of a Western state, but has moved to New York City. B.'s business in New York City is looking after his own investments. In the course of B.'s business a considerable amount of legal work comes to him, which he cannot handle because he is not a member of the Bar of this state, and he desires to turn over all such legal matters to A. for attention, upon condition that A. will give B. a portion of the fees received in such matters.

Is it the opinion of your Committee that it would be unprofessional for A. to make such arrangement with B.?

Answer: The Committee is of the opinion that any division of fees by a lawyer should be based upon a sharing of professional responsibility or of legal services, and no such division should be made except with a member of the legal profession associated in the employment as a lawyer. Any other division would appear to be a mere payment for securing professional employment, which is to be condemned.

If in the question propounded, the employment of B. is by clients to whom he assumes responsibility by reason of his office as a lawyer in the Western state, we should not consider the division improper per se, though it is still possible that section 274 of the Penal Law might condemn it.

On the other hand, the question seems to mean that the employment is not the result of the Western lawyer's practice for clients in his own state, but rather the creation of employment as a lawyer in New York by reason of the Western man's activity as a business man in New York. If this interpretation be correct, we would consider the division improper; it might (under some circumstances which we do not assume to construe) even be a violation of section 274 of the Penal Law, which is as follows:

"Section 274. Buying Demands on Which

to Bring an Action. An attorney or counselor shall not:

"1. Directly or indirectly, buy, or be in any manner interested in buying, a bond, promissory note, bill of exchange, book debt, or other thing in action, with the intent and for the purpose of bringing an action thereon.

"2. By himself, or by or in the name of another person either before or after action brought, promise or give, or procure to be promised or given, a valuable consideration to any person, as an inducement to placing, or in consideration of having placed, in his hands, or in the hands of another person, a demand of any kind, for the purpose of bringing an action thereon, or of representing the claimant in the pursuit of any civil remedy for the recovery thereof. But this subdivision does not apply to an agreement between attorneys and counselors, or either, to divide between themselves the compensation to be received."

43. Question: About twenty years ago A. was convicted of a felony. After serving about eight years of his sentence, he was pardoned and restored to full civil rights. Immediately after his pardon he set up in business and has continued in that business at the same address for about ten years. He is peaceful, respectable, and well thought of. Recently he was compelled to bring two suits against B., both involving questions of fact. B.'s counsel knew of A.'s conviction, his pardon, his restoration to full civil rights, and his subsequent clean private and successful business life. Yet on the occasion of each trial (one before a jury) B.'s counsel interrogated A. concerning his conviction of a crime, the sentence imposed, the time served, the charge, and even made certain details of or consequences of the crime a part of his questions. Do you consider this conduct and these questions of B.'s counsel proper and ethical?

Answer: The Committee considers that wanton, unnecessary, or unreasonable inquiry or comment respecting the discreditable past history of a witness or party is unethical and improper professional conduct; it cannot, however, assume to say that such inquiry or comment, whether admissible or not under the law of evidence, was, in the case suggested, wanton, unnecessary, or unreasonable.

44. Question: An attorney, in the course of representing a client in certain specific matters, is informed by the client that certain real estate is held by a third person for him (the client) in the third person's name, the property having been transferred by the client to the name of the third person for the purpose of avoiding a judgment, that deed being placed on record, the client, however, having taken back a deed from the third person to himself, this deed remaining off rec-

ord and in the client's possession. The information is given to the attorney in the course of a general discussion, and entirely disconnected from any matter in which counsel's service or advice had been given.

The client afterward fails to pay the attorney for the services rendered. Suit follows and judgment is recovered by the attorney. Execution is issued and returned unsatisfied. It appears then that the collection of the judgment, and therefore compensation to the attorney for his services, will be impossible unless he is permitted to proceed after the real estate in question and permitted to show that the same really belongs to the debtor client.

1. Would it be improper for the attorney, in enforcing his claim for compensation against his client by legal process, to attempt to reach his client's interest in the real property, thus necessarily disclosing in the proceedings, and utilizing for his own benefit, his client's statement to him, collection otherwise being impossible?

2. In legal proceedings for the enforcement of the claim, can the attorney properly call upon another attorney, who prepared and took the acknowledgments to the deeds of conveyance and reconveyance, to testify respecting the transaction?

Answer: In the opinion of the Committee, to preserve inviolate his client's confidence is a fundamental ethical rule of our profession, binding upon every lawyer. This rule is now embodied in our New York Code of Civil Procedure, section 835, and has been rigidly applied, but with certain apparent exceptions. With such possible exceptions in mind, the majority of the Committee is still of opinion that the attorney should not, in the case submitted, utilize for his own benefit the confidential statements of his client; and it would therefore answer Query No. 1 in the affirmative, and Query No. 2 in the negative.

45. *Question:* An inquirer has handed the Committee a series of advertisements appearing in a daily newspaper in the forms hereto annexed, and has asked an expression of the opinion of the Committee upon the propriety of such advertising by lawyers.

LAWYERS.

A.—Able lawyer, specialist family troubles, private matters, &c.; furnishes reliable advice; all cases handled; satisfaction guaranteed; quick results; domestic relation laws of all states explained. Call, write, **LAWYER**.....

A.—A.—A.—**ACCIDENTS**, estates, family troubles; cases handled successfully; satisfaction guaranteed; strictly confidential; matters quickly settled; no fee unless successful. Call, write, 'phone**LAWYER**.....

ACCIDENT CASES, DOMESTIC TROUBLES and all legal difficulties **STRENUOUSLY** handled to **YOUR SATISFACTION, LAWYER** Evenings till 9.

FOR results see me; reliable, experienced; successful; accident, family troubles, all cases, consultation free. Call or write. **LAWYER**.

LAWYER (American), highest standing; consultation free; notary public.....
Sundays, evenings till 9.

Answer: In the opinion of the Committee, all of the advertisements appended to Question No. 45 are improper.

"The ethics of the legal profession forbid that a lawyer should advertise his talents or his skill as a shopkeeper advertises his wares." *People v. McCabe*, 18 Colo. 186, 32 Pac. 280, 19 L. R. A. 231, 36 Am. St. Rep. 270.

The first four are also objectionable because they seem to indicate a willingness to take all cases, irrespective of the merit of the cause; and the first three have the demerit of containing an impossible and therefore false and misleading guaranty of satisfaction.

46. *Question:* In the opinion of the Committee would it be considered unethical for a lawyer to send the following form of letter to members of the Bar with whom he has a personal acquaintance:

"Dear Sir: In the course of your practice, you occasionally are retained to prosecute actions to recover damages for injuries sustained through negligence. If you do not keep in close touch with the different decisions of the courts as they are handed down daily, you may experience difficulties in framing a proper complaint.

"If you will send to me a full statement of the facts in any of your accident claims, I will draw the complaint for you, and a trial memorandum applicable to such case, and charge you for my services ten per cent. of the amount of the recovery or settlement. In the event of no recovery, or settlement, no charge will be made.

"Trusting we may be able to do some business together in the near future, I am,"

Answer: In the opinion of the Committee, it is requisite that members of the legal profession should aim to preserve its dignity. They regard the direct and general solicitation of professional employment as undignified, for this reason, they disapprove the appeal for business suggested in the question; they also consider that such appeal might be construed as intimating a willingness to accept professional employment regardless of the merits of the case, which they also disapprove. The Committee takes this opportunity to call attention to Canon 27 of the American Bar Association respecting the solicitation of professional employment, which Canon reads in part as follows: " * * * The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not per se improper. But solicitation of business by circulars or advertisements or by personal communications or interviews, not warranted by personal relations, is unprofessional. * * *"

47. Question: A list of questions submitted to the Committee on Professional Ethics by the sub-committee appointed at the conference of the

(a) Committee on Professional Ethics,

(b) Committee on Unlawful Practice of the Law,

(c) A Special Committee of Lawyers organized to aid in elevating the professional standards of the practice of commercial law. The several specific interrogatories appear below immediately preceding the answers thereto.

Preamble to Answer: In answering this series of questions the Committee is guided by its view that the practice of the law is a profession and not a trade or a business; therefore some methods which are unobjectionable in a trade or business may still be open to criticism in an attorney because they detract from the objects for which his profession exists. It is a profession, not only because of the preparation and qualifications which are required in fact and by law for its exercise, but also for the primary reason that its functions relate to the administration of justice, and to the performance of an office erected and permitted to exist for the public good, and not primarily for the private advantage of the officer. Such private advantage, therefore, can never properly be permitted to defeat the object for which the attorney's office exists as a part of the larger plan of public justice.

With these considerations firmly in mind the Committee expresses its opinion in answer to the specific inquiries, as follows:

I. (a) May A. B., a lawyer, conduct either in his own name or under some trade name or title a collection business, the following being assumed as the method of doing business: Advertisements or cards are inserted in publications, and letters sent to merchants, in which it is stated that the concern is engaged in a general collection business and solicits accounts for collection; solicitors are employed to visit merchants to solicit their collection business; the clerks employed in the business are paid fixed salaries; all of the profits go to the attorney; and the latter attends to professional matters arising out of the business within his own territory; the concern sending to other attorneys practicing therein such matters as arise outside of A. B.'s territory.

Answer: No. This plan unites the practice of a profession with the conduct of a business which involves the solicitation of professional employment; the essential dignity of the profession requires that general solicitation of professional employment should be avoided.

(b) Does it make any difference in the answer if the matter underscored in the previous question is omitted from the hypothetical case?

Answer: Yes. There is no reason why the lawyer may not make a specialty of collections as a part of his professional activities; he should not however cloak his identity under a trade name or title; he should practice his profession either in his own name, or in association with some other lawyer or lawyers whose names may be used to identify the association. If his announcements are inserted in publications, they should conform to the provisions of Canon 27 of the American Bar Association, approved by the New York State Bar Association: that is, they should consist of a simple professional card, and he should not in any other way generally solicit professional employment.

II. E. F., a collection agency, receives a claim for collection. Following failure to collect without suit, it sends the claim to A. B., an attorney, who performs legal services in connection therewith.

(a) May A. B. divide his fee with E. F.?

Answer: No. The division of professional fees with those not in the profession detracts from the essential dignity of the practitioner and his profession; and admits to its emoluments those who cannot lawfully perform its duties. If the legal services involve the bringing of suit, such a division appears to be prohibited by our Penal Law. (See section 274.)

(b) May A. B. receive a salary from E. F., E. F. charging its patron for the entire service inclusive of the professional service, A. B. making no charge direct to the patron?

Answer: No. A lawyer may receive a salary from a collection agency for services rendered to that agency, but if the lawyer render professional services to the patron of the agency the lawyer should make his charge directly to the patron, otherwise the agency would be determining the charge to be made for the lawyer's services and would be sharing in the lawyer's fee or making a profit on the lawyer's professional work.

(c) May A. B. charge for his own service a specific sum, which he retains wholly for himself, E. F. charging for its own service a specific sum which it retains wholly for itself, E. F. guaranteeing its patrons the faithful discharge of the duties of A. B., including payment over of all collections by A. B. for the patron?

Answer: The method of charging is unobjectionable, but it is derogatory to the essential dignity of the profession for a lawyer under such circumstances to permit another to guarantee expressly his honesty or efficiency.

(d) Does it alter the situation that all legal matters coming through E. F. are referred to A. B. within his territory?

Answer: No.

III. (a) May A. B. take a retainer from G. H., an organization of business men, to per-

form such legal services as G. H. may require as its attorney, and also to attend to such legal matters as the members of G. H. shall refer to A. B., G. H. urging and soliciting its members to place in A. B.'s hands for reference to A. B. all matters involving collection of accounts, or involving the representation of creditors in bankruptcy proceedings, upon the ground that by co-operation in the handling of debtor's affairs, members interested will profit?

Answer: We assume, of course, that the lawyer's retainer by the Association leaves him free to follow his own conscience. The Committee sees no impropriety in the course suggested, provided that G. H. is a bona fide organization formed by its members for their own benefit, is not engaged in a regular business of collecting accounts of non-members for profit and it is the actual interest of the organization which prompts its solicitation, and provided the plan is not merely a cover for the solicitation of business by the attorney. The practice of the solicitation of professional employment by a lawyer is to be condemned no matter what device may be resorted to as a cover or cloak: indeed, the adoption by him of a cover or cloak to conceal what if openly done would be professionally improper, merely intensifies the impropriety, for it adds deception to what would otherwise be an undesirable breach of the essential dignity of the office.

(b) May A. B. divide with G. H. such fees in bankruptcy matters referred to him by G. H., as he may receive as attorney, either for petitioning creditors, receiver or trustee?

Answer: No. The Committee's views of the impropriety of such division of professional fees are expressed in answer II (a) above.

(c) May A. B. pay to G. H. in the situation referred to in subdivision (b) above for services rendered to him by G. H.?

Answer: The vice of such a payment for services is the temptation to make it a cloak for compensation for the solicitation of business for A. B., or a cloak for an unequal preference to the members of G. H. We would see no impropriety in a reasonable compensation to the Association for services actually rendered if these two dangers were clearly eliminated in a particular case and the amount and mode of the payment were fully disclosed in the proceeding or settlement.

(d) May G. H. in matters in which it desires the co-operation of creditors, not members of G. H., circularize such creditors, urging them to place their claims with G. H. or A. B. in order that A. B. may conduct such legal proceedings as may be necessary, it being assumed that it is for the best interests of creditors that such proceedings should be conducted?

Answer: Upon the assumption that G. H. does this not for the purpose of engaging in a

general practice, but solely in the special case for the purpose of protecting the interests of its members, it may be done; the Committee believes it would be preferable to have the proxies run to G. H. or an officer; if it be a device to enable A. B. to do indirectly what he could not properly do directly, it is to be condemned.

(e) Does it make any difference in the above situation whether A. B. performs the service for such non-members gratuitously or not?

Answer: If the interest of G. H. demands or justifies gratuitous services for non-members, or any other good reason in the opinion of A. B. so demands or justifies it, he is not required to charge for his services; but if it is a mere device to secure non-members as clients in other employment, it becomes a reward offered for employment, and therefore is to be condemned for reasons already assigned.

IV. (a) May E. F., an existing collection agency, where the co-operation of creditors other than regular patrons or subscribers of E. F. seems desirable, circularize such creditors, urging them to place their claims with E. F. or A. B. in order that A. B. may conduct such legal proceedings as may be necessary, it being assumed that it is for the best interests of creditors that such proceedings should be conducted?

Answer: It may be that the act of E. F. is the unlawful practice of law within the scope and reasoning of *Matter of Co-operative Law Co.*, 198 N. Y. 479, 92 N. E. 15, 32 L. R. A. (N. S.) 55, 139 Am. St. Rep. 839, 19 Ann. Cas. 879; *Matter of Associated Lawyers Co.*, 134 App. Div. 350, 119 N. Y. Supp. 77, and *Matter of the City of New York*, 144 App. Div. 107, 128 N. Y. Supp. 999. The Committee expresses no opinion upon this question of law. If E. F.'s act be unlawful, the lawyer should not participate in any emolument resulting therefrom; but if it be lawful for E. F. to circularize creditors, "in order that A. B. may conduct legal proceedings," still it is unprofessional for A. B. to permit such solicitation of professional employment for him by E. F., since he cannot properly so solicit it for himself.

(b) May A. B. divide with E. F. such fees in bankruptcy matters referred to him by E. F. as he may receive as attorney either for petitioning creditors, receiver or trustee?

Answer: No; for the reasons already stated in II (a).

(c) May A. B. pay to E. F. in the situation referred to in IV (a) above for services rendered to him by E. F.?

Answer: No; in view of our answer to IV (a).

(d) Does it make any difference in the situation referred to in IV (a) above whether A. B. performs gratuitously or not the service

for such creditors who are not regular patrons to E. F.?

Answer: No.

V. (a) May A. B., an attorney representing some clients, creditors in XYZ, a bankruptcy proceeding, send a general circular letter to all creditors, informing them of his representation of some creditors, and urging them to place their claims and proxies in his hands, for the reason that co-operation is in the best interests of the estate?

Answer: No. The co-operation which is desired among the creditors to prevent fraud, or to secure an efficient administration is the concern of the clients, as to which the lawyer may properly advise them; but he should avoid doing directly or indirectly anything that savors of such solicitation of employment.

(b) May he do this, if the circular letter instead of dealing generally, asks that such claim be placed in his hands if the creditor is not otherwise represented?

Answer: No. This does not eliminate the objectionable element of solicitation.

(c) May he do either (a) or (b) if his sole motive is to insure the complete protection of his immediate clients' interests?

Answer: No. His motive is immaterial; as his client's interests demand protection, the client or some other agent of the client may seek the co-operation, always provided it is not a mere device to solicit employment for the attorney.

VI. (a) May A. B., an attorney, receive claims or proxies where such claims or proxies have been secured through circularization by a creditors' committee formed in XYZ, a bankruptcy proceeding?

Answer: We see no impropriety in the action suggested, provided the committee is not a cloak used by A. B. to procure employment.

(b) Does it make any difference that A. B.'s clients are the committee?

Answer: No; with the limitations already suggested.

(c) Does it make any difference that A. B. suggested the formation of the committee?

Answer: No. If the suggestion was in his client's interest, and not as a cloak, as already indicated.

(d) Does it make any difference that the proxies run to the members of the creditors' committee as attorneys in fact, A. B. appearing as counsel for the committee?

Answer: No. It appears preferable that the proxies should run as suggested because that course seems less liable to abuse as an objectionable cloak to solicitation of employment for the attorney.

VII. (a) May A. B. receive from C. D., a collection agency, claims in the XYZ bankruptcy proceedings, solicited by C. D., and

appear as attorney in such bankruptcy proceedings acting under power of attorney for such claimants?

Answer: Yes. A lawyer should not be debarred from accepting professional employment from a collection agency. We have already indicated the abuses to be avoided, and to which a lawyer should not lend himself. (See answers above to IV (a), (b), (c) and (d)).

(b) May A. B. receive from C. D. claims in such bankruptcy proceedings, and appear as attorney for or act under power of attorney for such creditors, C. D. being specifically authorized by the claimant to select an attorney for him, and as his agent notifying A. B. that it delivers the claim acting as such agent.

Answer: In a case not obnoxious to the criticism suggested in IV (a) and (b) above, the relationship between the attorney and client is direct, and therefore we see no impropriety in A. B.'s acceptance of employment by the creditor.

VIII. (a) Is there any impropriety in an attorney permitting his name to be advertised as attorney or counsel in connection with a corporation's, bank's, trust company's, or re-organization or creditors' committee's announcement of its purposes by advertising in newspapers or circulars or upon its letter-heads?

Answer: No; provided the particular form of advertisement is not otherwise objectionable. It is obvious that the re-organization committee, the corporation, the bank or trust company may depend in part in its appeal for public confidence and business on the standing and reputation of its professional adviser; so also in the case of creditors' committees either in a re-organization plan or in the request for co-operation among creditors, the name of the attorney by whom the proceedings in aid of the creditors will be conducted is often the determining feature in the decision of the creditor as to whether or not he will co-operate. On the assumption, therefore, that the attorney is not the moving party in the advertisement of his name, we think it would be unreasonable to answer this question in the affirmative.

(b) Is there any impropriety in an attorney permitting his name to be announced as attorney or counsel for a trade organization or association upon its stationery?

Answer: No.

(c) Is there any impropriety in A. B., an attorney permitting a trade organization for which he acts as attorney or counsel to solicit its members to consult A. B. upon such legal matters as require professional service, or to solicit the sending of claims for suit by members of the association to A. B.?

Answer: In general we consider such solicitation improper; where, however, the collective interests of the members of the As-

sociation require co-operation, it is not improper.

(d) Is there any impropriety in A. B. permitting a collection agency, doing a general collection business, including the solicitation of collections, but not legal business, to print upon its stationery and in its advertisements "A. B., Attorney" or "A. B., Counsel"?

Answer: No.

IX. (a) May A. B., a lawyer, having a commercial law practice, pay a fee to M. N. O., a list made up of lawyers and in which collection agencies appear, for the privilege of having his name appear upon such list?

Answer: Yes; provided the form of the announcement is not otherwise objectionable (see I (b)); provided also that the amount he pays to M. N. O. is not determined by the amount realized by A. B.

(b) Does it make any difference as to its professional propriety, that the list is used exclusively for and by lawyers, or is intended to be circulated also among laymen?

Answer: No.

(c) Does it make any difference as to its professional propriety, that the charge of the list varies according to the amount of business received by the lawyer through such a list?

Answer: Yes; since it necessarily involves a division of the lawyer's professional fees, in consideration of the securing of employment for him by the person with whom he divides his professional fees.

(d) Does it make any difference that the list in connection with its publication or circulation maintains a complaint department at its own expense, adjusting differences arising out of charges earned or claimed, and issues for each representative in the list a surety company bond guarantying the faithful performance of his duty?

Answer: Yes. It is derogatory to the essential dignity of the profession for a lawyer to seek employment by offering, or permitting another to offer, a bond to guarantee his honesty or efficiency.

(e) Does it make any difference as to professional propriety, that the list is confined wholly to lawyers, but managed for profit, and restricted in each town to such firms or individuals as are approved by the managers, assuming, also, that the managers in good faith, seek only to put into the list competent and trustworthy lawyers, and make their decision only after careful investigation concerning the lawyer?

Answer: No.

48. *Question:* I am advised that it is not unusual in this community for auctioneers, who conduct sales of real property in foreclosure suits, to divide their auctioneer's fee with the referees who are appointed by the courts to make such sales. Does not the

Committee consider such a practice on the part of referees to be unprofessional?

Answer: The Committee is not apprised otherwise than by the question that the practice mentioned is ever indulged; it would be loath to believe that it is either usual or not unusual; but it considers such action would be grossly improper.

49. *Question:* I have in my employ a clerk of mature years, who wishes to have cards printed showing that he is connected with my office. He has submitted to me a draft of such a card in the following form:

A..... B.....
with C.... D.....
Counsellor at Law
[Address.]
[Telephone.]

In the opinion of the Committee would such a card convey the impression that I am holding out this clerk as a lawyer, or is it, in the opinion of the Committee, objectionable for any other reason?

Answer: The Committee is not advised of any valid reason why the clerk, not being admitted to the Bar, should use a card referring to the attorney; and it appears to be beneath the essential dignity of the professional position of the attorney to permit its use, while likelihood of its abuse seems obvious.

50. *Question:* At a social entertainment given by citizens who are members of a single race, to honor a distinguished man of their number, a program was published and circulated containing paid advertisements, of which one is the following:

Telephone Residence Phone
LARGE ACCIDENT, MATRIMONIAL & CRIMINAL
ACTIONS A SPECIALTY.
ALL MATTERS STRICTLY CONFIDENTIAL
..... [Name]
LAWYER
..... [Address]

A (stating advertiser's race) lawyer who is a (stating race of distinguished guest) man's friend. Indorsed by leaders of the community. Has estimable record in all Courts.

Is it the opinion of the Committee that this is proper professional advertising?

Answer: In the opinion of the Committee the advertisement set forth in the question is improper. (See Canon 27 of the American Bar Association.)

51. *Question:* There are some collection agencies in town which are incorporated and which solicit bills for collection. It is their custom to turn over some of them to lawyers for suit. In such cases the collection agency always wishes to deal with a lawyer as if it were his client and wishes collections remitted to it instead of directly to the creditor. In your opinion, is not that method of doing business improper? This question arises frequently and is quite troublesome because, so

far as I know, there has been no adjudication of the matter.

Answer: In the opinion of the Committee, the patron of the collection agency is the client, but the Committee sees no impropriety in the lawyer's complying with the wish of the collection agency in remitting to it; assuming (as the Committee does) that the agency is the authorized agent of its patron to deal in his behalf with the lawyer. (See our answers to Question No. 47.)

52. Question: First: When a judge of a court of review or of last resort has a dispute which he wishes to litigate, may he, without impropriety or a breach of the ethics of the profession, prosecute his suit in a court from which an appeal or writ of error lies to the court of which he is a member? Or should he, before bringing suit, resign from his office as judge?

Second: When the judgment in such case comes before the court of review or of last resort, of which the plaintiff is a member, is it sufficient to meet the requirements of the ethics of the profession, or for the due, proper, and impartial administration of the law, for the reviewing court in deciding the case merely to say that the plaintiff in the case did not sit? Or, if not, what is the proper action?

Answer: First: In the opinion of the Committee, the judge may properly prosecute his suit without resigning his office.

Second: The reviewing court could, it seems to the Committee, be fully expected to deal properly with the case. The plaintiff should, of course, not sit as a judge in his own cause, but this does not disqualify his colleagues, who should not (and doubtless would not) permit him to participate in their deliberations or influence them in any way whatever. It does not seem to us that any formal action or comment of any sort by the court upon the judge's disqualification is necessary. A proper precaution to avoid possible, but not probable, misunderstanding would be an informal announcement that the disqualified judge did not participate in the deliberations or action of the court.

In the opinion of the Committee, the judge should not personally try or argue his own cause.

55. Question: A lawyer asks what course he ought to pursue in order to terminate his relations with a client who, it appears, finds fault with his advice, writes him a grossly abusive letter, and does not avail himself of counsel's offer to consent to a substitution.

It appears that the retainer was to collect a claim for services upon a contingent fee under a written contract which provides that the client, who, it appears, is also a member of the Bar, "shall be free to decide * * * policy, amount of settlement, acceptance of verdict, appeals, etc." An action in the Supreme Court under the retainer was commenced. In the complaint the defendant was named with the addition of an alias, which the court on his motion struck out. Plaintiff insisted upon an appeal being taken from the order made on that motion, although his counsel advised him that the order was not appealable. The appeal is pending and the time of plaintiff to reply to a counterclaim set up in defendant's answer is about to expire.

Counsel complains that from the beginning his client has pestered him with unnecessary and offensive epistles and has acted personally in an abusive manner.

Answer: As it appears that the client has made the continuance of the relations between him and his counsel intolerable and has thus precluded the performance of the contract by the counsel, the Committee is of the opinion that counsel would be justified in applying to the court in which the action is pending, on notice to the client, to be allowed to withdraw from the case upon such terms as the court may deem proper; leaving the client to any remedy at law upon the contract to which he may think himself entitled by counsel's refusal to act longer under the retainer. Until relieved by the court, counsel should take the proper steps to protect the interests of his client in the litigation.

56. Question: I invite the expression of the opinion of the Committee in respect to the following suggestion about which I have been recently consulted:

A receiver and his counsel agree to divide their fees, i. e., the receiver to pay to his counsel one-half of the commissions which the court might allow to him, and the counsel to pay to the receiver one-half of the amount which the court awarded to him as counsel for the receiver.

Query: 1. Was this agreement void as against public policy?

2. If not void, was it proper according to proper ethics?

Answer: In the opinion of the Committee, the agreement is contrary to the proper rules of professional conduct, and it is probably illegal.

Reform in the Requirements for Admission to the Bar in Wisconsin

A Rejoinder

By HOWARD L. SMITH

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UNDER the title "Reform in the Requirements for Admission to the Bar in Wisconsin," a member of the faculty of Marquette University Law School of Milwaukee, discusses in the last number of the Law School Review a bill introduced by him at the last meeting of the Wisconsin legislature, which was unanimously disapproved by the joint judiciary committee of both houses, and defeated. The purpose of the article is obviously to lead the reader to believe that the institution he represents is striving against great odds to raise the standard for admission to the bar in Wisconsin, that the law school of the State University is opposed to any changes, however good, and succeeded in defeating him by questionable methods—all for the sake of retaining "a vicious privilege," which has been denounced by a score of distinguished legal educators, whose names he mentions. If this charge were true, it would be a most serious reflection on the University school, and it would be deservedly entitled to the bad reputation which he so zealously seeks to place upon it. Although the animus of the article is so apparent that it must largely defeat itself, the writer, who is personally familiar with what took place before the legislature, deems it advisable, lest any should be misled, to state the situation as it exists in Wisconsin, and the rea-

sons why the bill in question was defeated. To begin with, it is safe to say that all persons who are genuinely interested in raising the standards of admission to the bar will agree with the author in his protest against the low standards and the lax practices countenanced by so many bar examiners and by the bar generally.

This laxness arises from the indifference of the bar and the public. If the bar has no pride in its membership, the public cannot be blamed for indifference, and if the public is indifferent, is it surprising that students of law regard the great end of their study as the passing of a bar examination? If successful in that, nothing else matters.

Obviously then it was a matter of moment when, as we are told, the faculty of the Marquette law school made up its mind, a year ago, that it would secure a reform in the requirements for admission to the bar in Wisconsin. Nothing would seem easier, for "reform" is a word to conjure with in Wisconsin. We can, therefore, sympathize with the author in his resentment at the failure of his particular reforms, especially as nine-tenths of them seem to be unexceptionable. It seems inexplicable that such a bundle of good things should have been unanimously recommended for indefinite postponement by an intelligent judiciary committee. But before

we are too hard upon the legislature, we should perhaps remember that these unexceptionable features of his bill were never mentioned to the committee or the legislature. The writer attended all meetings at which the bill was discussed, and he can say from personal recollection that neither by its author nor by any of his assistants participating in the discussion was any other feature of the bill mentioned than that section which required the graduates of the State University Law School to take the State Bar examinations. It is doubtful if a single member of the committee had in mind that the bill provided for anything more than this. All else was regarded as a mere make-weight for which the sponsors of the bill cared nothing independently, added to the bill for the mere purpose of clothing in a garb of disinterestedness the demand of the author that his students should be placed on the same footing as the graduates of the state law school with respect to admission to the bar. It is quite possible that, had the attention of the legislature been directed to such of the provisions of his bill as were meritorious, and capable of independent enactment, it might have given them its approval. So much in fairness to the legislature.

That the purpose above mentioned was the sole one which the author had in mind is shown by the first bill which he caused to be introduced. For with what would seem a strange forgetfulness, if we were not familiar by many an instance with the absent-mindedness of professors, the author forgets to mention that his faculty had two bills introduced, the first of which read as follows: "Bill No. 840A. Introduced by Mr. Sharp, March 5, 1913.

"Subdivision 1 of section 2586 of the Statutes is amended to read:

"(Section 2586) (1) Any resident graduate

of the law department of the University of Wisconsin and any graduate of any law school in this state whose course of study and faculty shall be approved by an order entered by the Supreme Court shall be admitted to practice in all the courts of this state," etc.

—the amendment consisting in the insertion in existing law of the italicized words.

This bill being set down for hearing before the judiciary committee, a delegation from the Marquette faculty came out to Madison to support it; but, as nobody appeared in opposition, the committee postponed its consideration to a later date, and requested the representatives of the State University Law School to appear and state their views. This became unnecessary, however, as at the adjourned hearing the Chief Justice of the Supreme Court appeared before the committee and intimated that the court would not assume the responsibility that the bill sought to place upon it.

Meanwhile the Marquette faculty, apparently foreseeing such a result, had caused to be introduced on March 12 No. 1024A, the bill to which our friend chooses to confine his present discussion. One cannot help being surprised, however, in view of the provisions of the first bill, at the author's subsequent indignation, so eloquently and pathetically voiced in this review at the monstrous idea that the graduates of any law school, however good, should be admitted to practice without further examination. The lapse of seven short days between March 5 and March 12 does not seem sufficient to account for such a radical *volte face* from "any school approved by the Supreme Court" to "no school of any sort under any circumstances."

After all, the inconsistency is perhaps only apparent. If we should indulge in

the assumption that the only purpose of the faculty was to promote the interest of their school, the two measures, apparently so opposite, tend almost equally in that direction, and all inconsistency disappears.

The first bill having been thus gotten out of the way, the second came up for hearing before the joint judiciary committees of the two houses of the legislature. At that hearing representatives of the State University Law School attended by request of the committee and stated their views on the only paragraph of the bill which the Marquette representatives touched upon, viz., that which took from the graduates of the State University Law School the right to admission to practice without further examination. They called the attention of the committee to the fact that the state had for forty-five years maintained a law school, whose standards had always been far above those required by law for admission to the bar of the state; that such additional requirements at that time consisted of two years of college work as a condition of entrance into the law school (it has since been further increased by an additional requirement of a six months clerkship in a law office); that the school had a library of over twenty thousand volumes, six experienced professors devoting all of their time to the work of the school, four others part of their time, and was generously supported by the state, without any attempt at financial return; that it had been the policy of the state from the foundation of this law school to encourage prospective lawyers to comply with its requirements, so much higher than the minimum required for admission to the bar, by exempting those who did so from any further tests or examinations;

and that this policy had been universally satisfactory and believed by everybody to be in promotion of higher standards until it began to conflict with a private interest.

It then became necessary to say something about that private interest which would have been willingly left unsaid if it had not itself invited and necessitated comment. It became necessary to point out that the only other place in the state at which systematic legal instruction purported to be offered was the institution of which the complainant was the sole professor (using that word in its accepted sense of one whose sole or chief business is teaching), and that the real, the only question was whether it would be in the interest of sound and thorough learning for the state to say to law students, "It makes no difference—one is as good as the other." In this connection it had to be noted that the institution in question, starting under another name and as a purely commercial speculation, was in 1908 "bought" by a sectarian institution, the so-called "university" of which it now forms a "department." (Bulletin, Marquette University, College of Law, 1913-1914, p. 6.) But the "university" had absolutely nothing to give to the law school, no endowment, no income, not even a roof until 1910, if I correctly read its bulletin (page 6). It has no library worth mentioning, no faculty in the proper sense of the term, except one worthy young man recently graduated from law school. The rest of the "faculty" consists of judges and practitioners, nineteen in number, with eleven lecturers according to the latest catalogue, for whom the school furnishes a grateful relaxation from the labors of the day, especially in the night school, which meets on three evenings a week, thus giv-

ing to the school, to quote from its latest announcement, "an atmosphere more practical and less academic than is found in many schools." But this atmosphere, though "practical" and not severely "academic," nevertheless has a flavor of intellectuality, for the school possesses a library supplied with the English Common Law Reports, the Federal Reports, and the reports of all but forty-three states, to say nothing of the Northwest-ern Reporter and some "miscellaneous" books donated by an ornamental "dean." (Bulletin 1913-1914, p. 6). It has, unfortunately, no endowment, and no income except from its students; but with all these handicaps it maintains, as has been said, a day school and a night school on three evenings in the week, with the requirement of a high school course "or its equivalent" as a prerequisite for admission.

Needless to say, it grants degrees. Upon its acquisition of the Milwaukee Law School in 1908 its first act was to grant the degree of Bachelor of Laws of Marquette University to all graduates of the Milwaukee Law School who would pay five dollars. This was cheap for a university degree, and so at one stroke this worthy institution accomplished a three-fold object; it raised the standard of the bar, put money in its purse, and acquired a list of alumni whose names have ever since graced the pages of its annual announcements.

It is, in short, one of those institutions that seem inevitably to spring up in our large cities, which owe the possibility of continued existence to the indifferent and good-natured complaisance of a bench and bar who permit themselves to be used as the unwitting and entirely unintentional instruments for the degradation of legal instruction. Any young

lawyer can start a "law school" in any of our big cities, and in two weeks' time announce to the world a "faculty" that shall absolutely blaze with legal luminaries from judges of the highest courts down. Their connection with the school may be so tenuous as to be little more than nominal, but that does not prevent them from figuring as corner stones of the temple in the advertising literature scattered by the promoters. Jurists lend their names to such schemes, without any thought of fraud or harm, in much the good-natured way that they respond to the smoker's request to lend him a match. A concrete instance in the history of the very institution in question will illustrate my point. For some years it carried in its printed "faculty" list the name of one of the greatest of our Western jurists. Upon my mentioning the subject to him at one time, he told me that his sole connection with the institution had been the delivery of two lectures at intervals of something less than three years. He had delivered more lectures than that at our law school, and it had never occurred to us that he was one of the faculty. I notice that his name has disappeared from the "faculty" roster. But as long as such use of our names excites only amusement or surprise, they will continue to be used by the unscrupulous for their own purposes; for the public in general, knowing nothing about legal education, supposes, of course, that the great names paraded are a guaranty of standing.

But all questions of ethics aside, such a law school may sometimes serve a good purpose. It is not so many years since most of the systematic legal instruction in this country was given by schools no better equipped; there may

be sections of the country to-day in which nothing better is available. I think the easy complaisance of bench and bar in such matters is often due to ignorance of the astounding advances that have been made in legal instruction in the last twenty-five years or less, and of the revolution in the character of the law schools. But, however this may be, Milwaukee is not so situated that the existence of such a school there can be considered as anything else than a hindrance to legal education. Milwaukee is but eighty miles from either Madison or Chicago, and not much further from Ann Arbor. At all of these places law schools exist that have libraries, faculties, and ample incomes in no way conditioned upon the precarious fees of students. At one of these schools Milwaukee students may obtain free instruction; at the others, for a moderate compensation. In view of these facts, the maintenance of such an institution as I have described cannot be deemed to fulfill any useful purpose. The law which it sought to have repealed is the most powerful influence at present operative in favor of higher standards in this state.

But we were told—and the published announcements of the institution do not fail to remind us of the same fact—it is a member of the Association of American Law Schools. And this, alas, is true. It was admitted at Milwaukee in 1912 *after* the Association had adopted a resolution requiring a minimum law library of 5,000 volumes, and *after* it had been stated on the floor of the Association by the representative of Marquette that it claimed to have a library of "3,000 volumes or perhaps a few more now." (Report of the Am. Bar Ass'n, 1912, p. 963.)

Within a few minutes of its admission

the Association also adopted the following resolution:

"Whereas, the maintenance of regular courses of instruction in law at night, parallel to courses in the day, tends inevitably to lower educational standards:

"Be it resolved, that the policy of the Association shall be not to admit to membership hereafter any law school pursuing this course." (Rep. of Am. Bar Ass'n, 1912, p. 965.)

Possibly the night courses at Marquette are not "regular," or are not "parallel," or more likely the Association was not advised of the facts. Its action otherwise seems unaccountable.

Of course, the fact is that the admission of this school is only one more monument, where none was needed, to the inability of the Association to resist local pressure from the city whose hospitality it is, for the time being, enjoying. If the Association had never met in Milwaukee, this institution would not now be a member of the Association. That it did not comply with the requirements for admission—notably in the matter of library—was excused by Father Moulinier on the ground that "the school is a private school, as you must know; it is not subsidized." (Proceedings, p. 963.) It was said that it intended to acquire some books soon, and to render itself otherwise fit for admission. No doubt it still intends to.

It is very unfortunate that the Association of American Law Schools should be so susceptible to hospitality. It has fallen a victim to this susceptibility on more than one occasion, when unworthy local institutions have been admitted, or retained—schools that could never have obtained favorable consideration at any other meeting than one held in their own back yard.

Once in, the trick is turned, and nothing is likely to happen to either turn

them out or compel a compliance with the nominal standards of the Association. At any rate, nothing has happened in the Milwaukee case, and probably nothing will happen until the Report of the Carnegie Foundation's investigation into legal education may perhaps set in motion the sluggish machinery. For fear of misconstruction of motives, I would have preferred to await some such obviously disinterested exposé. But the wanton and absurd attack upon the University of Wisconsin, and the slanderous misrepresentation in allegation, omission, and innuendo of the position of this faculty toward legal education, makes it necessary that the truth should be stated now, even at the risk of present misconstruction and of more authoritative repetition later on.

It was considerations such as these that led the joint judiciary committees of the Wisconsin legislature to the unanimous belief that the cause of legal education in this state was being advanced and not hindered by the existing law operating as an encouragement to young men to avail themselves of the superior facilities offered by the state. And it was such considerations, no doubt, which led the legislature to adopt the report of its committees. "*Hinc illa lachrymæ.*"

The author insisted, before the committee, as he does in his article, that in Continental Europe the graduates of the State Universities are required to pass further examinations conducted by the state. But he neglected, and neglects, to mention that in Continental Europe such institutions as that of which he is the sole professor would not be permitted to exist on any terms for a single day. The business of professional education is exclusively a state affair, and the harm which flows from such institu-

tions as the Milwaukee one is prevented by outlawing. The state of Wisconsin aims only measurably and not so effectively at the same result, not by prohibiting, but by preferring one to the other. This is a free country, and within extended limits everybody may do what he pleases, even to running a law school three evenings in the week. But the principle of freedom does not require that everything shall be equally esteemed.

If the law school in question has any friends who are really interested in legal education, the course for them to pursue is clear, and it is not an unfriendly hand which here suggests what it should be. The *sine qua non* should be an endowment of not less than a million dollars. With part of this, they can supply themselves with a good library, and with the income on the balance, wisely invested, maintain an adequate faculty. On the heels of this will swiftly come the abolition of "night schools," the adoption of more adequate entrance requirements than a high school education "or its equivalent," and the establishment of high and scholarly standards throughout the school itself. When that time comes, it will not find the University of Wisconsin asking for any preferential treatment. Indeed, so far as the writer is concerned, he would advocate, under those conditions, turning over to it the entire business of legal education in the state, undeterred by the fact that it once permitted itself to be bought by a sectarian institution in need of support. For I am not afraid of sectarianism contaminating the law, and there is perhaps no need of two good law schools in the state of Wisconsin. There is certainly no need of any poor ones.

NOTE.—Much of interest in this connection may be found in the final report of the Royal

Commission on University Education in London, of which Lord Chancellor Haldane was Chairman and whose report bears date 1913.

The law school feature of such a university is discussed on pages 145-150. The particular conclusions of the commission which are of interest in this immediate connection are three:

I. That a law school should always be a faculty of a great university.

II. That no attempt to establish such a faculty should, however, be made until an adequate endowment is available.

III. Such endowment should be a sum adequate to produce with fees an income of not less than £10,000 (\$50,000).

Admission to the Bar on Diploma

By ROBERT L. HENRY, JR.

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DEAN A. W. RICHTER, of the Law School of Marquette University, in his article on "Reform in the Requirements for Admission to the Bar in Wisconsin," in the winter number of the American Law School Review, made an attack on the Law School of the University of Wisconsin which seems to me to have been beside the mark. He set forth the provisions of a bill, in the drawing up of which he had a part, which failed to pass the Legislature, according to his statement, on account of the opposition of certain alumni of the State University. He admitted that the bill would have passed if it had not been for the provision that the diploma of the Law School of the University of Wisconsin should no longer admit to the bar of the state.

Where, I ask, was Professor Richter's public spirit? Why did he not strike out the provision which caused the defeat of the bill? If he had done so, Wisconsin would have a higher standard of admission. We can, I feel sure, all agree that the bill had many excellent features. Why were they not allowed to become law without the single provision in question? Did Professor Richter consider that the most important?

A great university is accused of acting solely through self-interest. Did Professor Richter have any self-interest in mind when he inserted the provision in question? Suppose the effect of the admission by the diploma of the State University is to increase the attendance of that school. Does it lower the standard of the bar in Wisconsin for a few more students to attend that law school than otherwise would? Would the standard necessarily be raised if a few of such students should go to Marquette University instead?

Professor Richter characterizes admission by diploma as one of the principal evils which the bill was intended to abolish. He fails to state any reason why it is an evil. He says that the matter has been settled by the Association of American Law Schools and by the Section on Legal Education of the American Bar Association. The question is, according to him, "beyond the domain of present-day argument." Before I thought the matter over, I had the same notion. I found, however, that I had accepted an opinion ready made. I had even gone so far as to state it as my own view. But, when challenged for reasons to support it, I had to beat a hasty retreat. I should

like to ask Professor Richter to think **about** the matter, and to see if he can **find**, after taking into consideration present-day conditions, any arguments **for** his position.

Let me suggest a possible explanation of the attitude, or apparent attitude, of the Law School Association. That body had been completely dominated by four or five schools, which draw their students from all parts of the country. May not that have influenced the expressed view of the Association? It is possible that, even after an adequate debate, a vote of the Association would lead to the result reached. The schools which draw students only from the locality, and which have no diploma privilege, might unite with those of a national following. Of course, they could overwhelmingly outvote the few state institutions which are members of the Association and possess the privilege. But I cannot believe, if the matter were properly discussed, that the vote would be governed by self-interest alone. I might add, however, that such a thing as a real discussion is well-nigh impossible at our hurried meetings. I prefer to think—in fact, I believe—that the controlling schools themselves did not consciously foster the notion that admission by diploma is necessarily an evil, from self-interest. Sometimes a pious idea, which incidentally benefits the pious, is not carefully scrutinized. I do not know how the committee of the Section on Legal Education was composed which agreed with the Law School men; but perhaps it consisted of representatives from some of the leading and cosmopolitan schools, or perhaps it took action without an adequate discussion, or an exposition of the other side of the case.

It may at first blush seem a little un-

fair that the graduates of a great cosmopolitan school, such as Harvard, should have to take the bar examinations in Wisconsin, when those who have gone to the state institution are exempt. Perhaps, also, it may seem not quite right that the holders of an LL. B from Marquette should be at a similar disadvantage. But if it is as easy to get by the bar examiners in Wisconsin as Professor Richter says it is, there can be no real hardship. A man with three years of thorough legal training, in many cases on top of a four-year academic course, should have no difficulty in a test which men who have not had even a high school course and who have studied law in an office one or two years succeed in passing. Professor Richter says he knows of many instances of the latter in Wisconsin.

But, to be perfectly frank, is not this the situation? Bar examinations are commonly of such a nature that graduates of the best law schools do sometimes fail, while men entirely unfitted pass. If the same ideas prevailed among the examiners as do among law professors, such would not be the case. If the questions were involved hypothetical cases, and the same kind of answers were expected as in law schools, the men with trained legal minds would pass, and the others would fail. But such an Utopian situation we are a long distance from achieving.

It may happen under present conditions that certain men from the great law schools, which draw from all the states, such as Harvard, may fail. Also men from institutions not connected with the state, whose students are mainly local, such as Marquette, may go down. But those from the state institution, whose diploma admits one and all, are safe. Would it not be conducive

to the welfare of the Wisconsin bar if all the graduates from good law schools should pass, and if all the failures should be among the poorly prepared? It should be no satisfaction to Marquette to see a few men from the University of Wisconsin fail also.

I do not accuse Professor Richter of having reasoned all that out. I would rather think that he is still in the situation that I was when I repeated, without thinking, the dictum of the Association of Law Schools. He does not hesitate, however, to attribute bad motives to a great institution of learning, in its desire to retain the right to have its diploma admit. He even goes so far as to insinuate that the member of the faculty of that Law School who is on the board of bar examiners might be unfair to the students of a rival university. Why such aspersions? It seems to me Professor Richter should rejoice that such a man is on the board. One of the greatest difficulties in the whole problem is the divergence of ideals between the law schools and the boards of examiners. A law professor on a board can do much to bring them together, and to raise the standards for admission to the bar. I should think that it would be only the University of Wisconsin and the professor in question who might object to such an arrangement. It lays the professor and his school open to attack by persons who believe others cannot be honest and straight. If Professor Richter is sincere in his desire to see standards in Wisconsin raised, as I assume he is, he should rejoice that a University of Wisconsin professor is willing to make the sacrifice necessary to serve on the examining board, and to take the aspersions which suspicious persons are likely to make upon him.

The example of Germany, which Pro-

fessor Richter cites, is not in point at all, for the conditions there are presumably quite different from what they are here. It seems to me, in the absence of any specific information to the contrary, and from a general knowledge of the situation there, we can assume that the examining board established by the imperial government is competent. With such a board, we could all agree that uniformity is desirable. It is better to have all candidates come before one committee than to have each university determine its own standard. But proper safeguards for admission, including boards with ideals in conformity to those held by experts in legal education, is exactly what we have not in this country, according to Professor Richter's own statements. A false assumption that we have such adequate boards, or a shutting of one's eyes to their inadequacy, is what may be responsible for what I believe to be a false conclusion, namely, that admission by diploma under present conditions is an evil.

I was curious to know what arguments could be set up in favor of abolishing the diploma privilege, and I therefore wrote one of the leading men in the field of legal education, who, I knew, took that position. He had recently asked the legislature of the state to deprive his school of the right to have its diploma admit. That body, with what seems to me wisdom, refused to grant his request. The following was his reply to my letter:

"The reasons why we favor the repeal of the statute admitting graduates of this Law School to the bar without examination are briefly these:

"1. There is a sort of offensive egotism in the assumption that the graduates of this Law School are better prepared for practice of the law than those of other law schools whose graduates apply for that privilege.

"2. This statutory privilege removes a sort of check upon the work of the favored law

schools, which would probably be beneficial to them.

"3. It encourages the establishment and maintenance of inferior law schools in the state with low standards of scholarship and professional ethics.

"4. It gives to each of the bodies primarily concerned, the faculty of the law school and the state board of bar examiners, an opportunity to form an opinion as to the character of the work done by the other.

"5. The unanimous opinion of the Committee on Education of the American Bar Association, opposed to this kind of educational graft, is entitled to respect."

As to the first reason, there does not seem to me to be any egotism about the matter. I never heard of a state university law school, possessing the right to have its diploma admit, that claimed, or even in its inmost thoughts supposed, that it was any better than some of the leading law schools of the country, such as Harvard and Chicago. The privilege is usually confined to the state university. There is a sound reason for that. The state can control its own institution. But it may be desirable, and I suggest that it is in the domain of practical politics, to extend the privilege to all schools meeting certain requirements. The Education Department of the State of New York has an approved list of law schools. Why should not every state have? It might be possible to have uniform lists in the several states. Such a list could be based on the report of the National Commissioner of Education, or on the information now being gathered by the Carnegie Foundation for the Advancement of Teaching. I submit, would it not be to the interest of the American bar if the diplomas of all high-standard law schools admitted to the practice? It will be a long time before we arrive at a satisfactory solution of the bar examination problem. In the meantime anything which will encourage a larger number of men to

come to the bar through the recognized law schools, the better for the bar. If admission by diploma tends to encourage that, it is a good thing.

The second argument is that the diploma privilege "removes a sort of check upon the work of the favored schools which would probably be beneficial to them." It seems to me that any school of standing needs no such check. The law school standards are higher than those of the bar examiners. How can the latter operate as a check at all? I know, however, from my own experience, how the supposed check may work. Large schools, whose reputations are firmly established, and whose students come from all parts of the country, can afford to ignore the results of bar examinations—and the effect of the approaching ordeals on the students. The graduates scatter to all parts of the country, and it is never known how many of them fail in the examinations of their respective states. A large number of the outgoing seniors do not plan to take the tests until some months after leaving school, and the result is that very little thought is given to the matter. But suppose the institution is one which draws its students mainly from the state, and suppose that the whole graduating class expects to take the bar examinations immediately after getting their degrees. For weeks and months beforehand the atmosphere is full of the subject. The students can think of little else, and they do not care to study anything which will not help them get through the bar examinations.

Suppose, also, that a couple of the best men in the preceding class had failed. What effect might all that have on a school which did not possess the backbone to stand by its ideals? The failure of the graduates to pass is accepted

by the man in the street as proof positive that there is something wrong with the law school. Would that operate to induce the school to raise its standards? Quite the contrary. There would be no assurance that graduating a smaller class would reduce the proportion of failures among the law school men. It may have happened that some of the poorest men in the class and some who did not get their degree passed the examinations for admission to the bar. Might not the pressure be to induce the school to organize its courses and to adjust its methods to conform to the ideas of the board of bar examiners? Might it not be tempted to degenerate into a cramming institution? On the other hand, if the diploma admitted, there would be perfect freedom to carry out its ideals. In addition, there would be a better opportunity to persuade students to take and to be interested in subjects good for them, but the practical bearing of which they fail to appreciate, such as jurisprudence.

The third reason given for doing away with admission on diploma is that it encourages the establishment and maintenance of inferior law schools, with low standards of scholarship and professional ethics. I confess I cannot quite follow the reasoning. I should think it would have quite the opposite effect; for a failure to pass on the part of a few of the graduates from the state institution would be made use of as an argument against it and in favor of themselves by the very institutions in question. It may be that a night cramming school can successfully prepare candidates for the kind of bar examinations that are given. If so, its success will be interpreted as proof positive that it is as good or better than the state institution. Further, if we accept it as a

fact that the diploma privilege does increase the attendance of the favored institution, a withdrawal of the privilege would have the effect of increasing the enrollment of the low-standard schools.

The fourth argument is that the repeal of the provision admitting graduates without further examination "gives to the faculty of the law school and to the state board of bar examiners a successful opportunity to form an opinion as to the character of the work done by the other." I hope that those who have such opportunity are getting great benefit and satisfaction out of it, and that those who want it will be pleased with it when they get it. I submit, however, that the way it actually works is as follows: Suppose all of the graduates from a school pass. I take it that there is a mild degree of satisfaction on the part of the law faculty in such cases, and a feeling that the honor is thoroughly deserved. No one else thinks anything about the matter. Even the bar examiners are not convinced by such a demonstration that they are giving the right sort of test. They may have little doubt about that, regardless of who passes. But suppose the case is reversed; a number of the graduates of the school in question having failed. The law faculty thinks there is something the matter with the bar examinations, but every one else thinks the fault lies with the law school. Under such circumstances the professors must feel thoroughly pleased with their opportunity to form an opinion as to the work of the bar examiners.

The fifth reason, namely, that "the unanimous opinion of the committee on education of the American Bar Association is entitled to respect," I have already considered. Certainly it is entitled to respect, but we do not have to

accept it, unless we are convinced of its soundness.

In favor of the admission by diploma it may be said that under present conditions it has a tendency to raise the standard of the bar. The reasons are two: One is that it induces some men to attend the institution having the privilege, who otherwise would prepare in an office or in some second-rate school. Incidentally, perhaps, it influences a few to stay at their home institutions who might go to such schools as Harvard or Chicago, or who might attend a school of high standing in their own state other than the one whose diploma admits. My feeling is that very few men who have the money to go away to one of the best schools, and also have the notion to do so, are deterred by fear that they will not pass the bar examinations when they return. There may be some

who choose the state university on that ground, rather than some other nearby institution. But the matter is of too little consequence to be taken seriously. Certainly the profession is not injured. If there is any evil involved, is not the best way to go about the removal of it to get the legislatures to extend the right of admission by diploma to schools other than the state institution, rather than to try to deprive the latter of its situation of vantage.

The second reason in favor of admission on diploma which I should like to offer, and the strongest one in my estimation, is that it affords freedom to the law schools to work out their own problems, and enables them to get the students to look upon their work with the proper attitude of mind. Such a situation is a great boon, and helps bring about a higher standard for the bar.

Bar Association and Law School Notes

The next annual meeting of the American Bar Association will be held in Washington City, D. C., on October 20, 21, and 22, 1914.

The membership of the American Bar Association has grown from 1,814 in 1903 to 3,585 in 1908, and to 8,033 in 1913. And its annual meeting grows every year in interest and importance.

◆ ◆ ◆

By act of the 1913 session of the Michigan Legislature applicants for the Bar in that state must have had a four-year high school course, or its equivalent, and either (a) three years of study in a reputable law school, or (b) four years of study in a law office or under a preceptor.

The same Legislature has tightened up the admission to the Michigan Bar of attorneys from other states. Hereafter only attorneys who have actually practiced regularly for three years and who are in good standing at the Bar in the states from which they come are eligible to admission on motion to the Michigan Bar. A convincing showing must be made by such attorneys in their application, and the Board of Law Examiners

is required to conduct an independent examination to verify the statements made in the applicant's petition for admission.

◆ ◆ ◆

The Supreme Court of Illinois has recently made an important amendment to its rule with reference to admission to the Bar, so far as preliminary education is concerned. According to the rules of 1903, the applicant was required to show that he had had a preliminary education equivalent to that of a graduate of a high school in Illinois. Under this rule some law schools undertook through high school teachers to give a law student his preliminary education at the same time he was taking his course in law. The rule did not specify the length of course in a high school, or say anything concerning the standing of such school. By the recent amendment the applicant for admission must have received a general education equivalent to that of a four-year high school of the

state and such education must be completed before he enters upon the study of the law.



Although the present system of Bar examinations in Texas, by a Board of Examiners appointed by each Court of Civil Appeals, is a great improvement over the old method of oral examination in the trial courts, it is far from satisfactory. "We are earnestly striving," writes a member of the Texas bar, "to have one board under the Supreme Court. Our failure to date is not due so much to active opposition as to the lack of active interest on the part of legislators, our bills losing out because not coming to the attention of the houses at the proper time and in the proper way."



An application for the addresses of the "State Board of Bar Examiners in Kentucky" brings in a list of 43 names, with the information that this is less than one-third of the possible total. Large as it is, this number appears to be an underestimate.

In Kentucky, every Circuit Judge is a Bar Examiner *ex officio*; and he may appoint, in any given case, two other examiners from the Bar. They hold office for the single occasion or during the pleasure of the judge.

The Kentucky State Bar Association, with the Louisville Bar Association assisting, has been trying hard to get an organized State Board of Bar Examiners. A bill introduced last January "to regulate the admission of attorneys to practice law" provided for a board of three examiners to be appointed by the Court of Appeals, and to hold office for a term of three years. There was hope as late as the middle of March that the bill would pass. But the hard fight made by the Bar Associations did not find a response in the Legislature. The bill was defeated, and "the fight is postponed for another term."



The law faculties of Stanford University and the University of California have for several years been agitating a reform in the method of examination for the Bar. The California State Bar Association recommended a bill for adoption at the last session of the Legislature providing for a uniform system of admission to the Bar and the establishment of a Board of State Bar Examiners in place of the present system of examination by the District Courts of Appeal. The bill passed the Legislature, but Governor Johnson failed to approve it, so that it did not become a law. The State Bar Association, at its meeting in November, again approved the plan to raise the standards of admission. The committee of the State Bar Association upon legal education comprises in its membership Dean Woodward of Stanford Uni-

versity, Dean Porter of the University of Southern California, and Professor McMurray of the University of California. The movement for raising the admission requirements is also supported by the San Francisco Bar Association.



Since 1851 the Indiana constitution has provided that "every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice." A proposed "Lawyers' Amendment," in the form of a provision that "the General Assembly shall by law prescribe what qualifications shall be necessary for admission to practice law in all courts of justice," has been three times submitted to the people for definite action. It has always received the approval of the General Assembly, and every time that it has been submitted to the electors a majority of those voting on it have been in favor of its ratification. In 1910 the vote was 60,357 for the amendment to 18,494 against it. But the proposed amendment, being submitted on a special ballot at general elections, has never received the vote of a majority of all the qualified electors voting at the elections at which it was submitted.

The result is that the "constitutional lawyer" of Indiana may still claim his sixty-two year old privilege. That he is not held in the highest esteem, however, is strikingly in evidence. There are, for instance, six law schools in Indiana, with an aggregate enrollment of about 600 students. Between 125 and 130 Indiana students enroll yearly in the State University Law School, although it requires of candidates for a degree two years of college work for entrance, and thereafter three years of residence in the law school.



Referring to the recent efforts in Wisconsin to reform the requirements for admission to the Bar, Mr. A. W. Richter, of Milwaukee, writes as follows: "The Milwaukee Bar Association took the matter up before the bill came up for vote in the Legislature and held a special session for the discussion of it. The debate waxed very warm, but the Association finally made its decision unanimous, indorsing only that provision of the bill which provided for the repeal of the diploma privilege."



Frank Irvine, dean of Cornell University College of Law, has been appointed a member of the Public Service Commission of the Second District of New York State and has accepted the appointment. His resignation from the Cornell University Faculty will take effect next June.

Judge Irvine is appointed to succeed Cur-

tis N. Douglas, of Albany, whose five-year term expired on February 1, 1913, and who has been holding over because an appointment made last year by Governor Sulzer was not confirmed by the Senate. Judge Irvine's term of office, therefore, will be about four years. The salary is \$15,000 a year.

Dean Irvine has been professor of practice and procedure in the Cornell University Law School since 1901, and dean of the faculty since 1907. When he accepted the professorship he was practicing law in Lincoln, Neb. He had previously been District Judge of the Fourth District of Nebraska (1891-93) and Commissioner (extra judge) of the Supreme Court of Nebraska (1893-99). He was born at Sharon, Pa., in 1858; he took the degree of B. S. at Cornell in 1880, and the degree of LL.B. at the National University in Washington in 1888. In 1883-84, having been admitted to the bar, he was Assistant United States Attorney in the District of Columbia. In 1884 he moved to Omaha and began the practice of law, which he continued until he went on the bench.

The office of the "up-state" commission in New York is at the Capitol in Albany. Meetings of the commission are held there weekly, but the commissioners are not required to live in Albany, and Judge Irvine will retain his residence in Ithaca.



EX-PRESIDENT TAFT AT THE UNIVERSITY OF MINNESOTA LAW SCHOOL.—Ex-President William H. Taft, now Kent Professor of Law at Yale University, delivered five lectures on Anti-Trust Legislation before the students of the Law School of the University of Minnesota, during the week April 16-21.

The first of these lectures was a clear exposition of the development of the common-law doctrine as to contracts tending to restrain trade and promote monopoly. The limitations of the common-law rule were sharply defined, with special reference to the terms of the Sherman Anti-Trust Act.

In the second lecture, Mr. Taft stated the general economic and political principles upon which the policy of federal anti-trust legislation rests. In the subsequent lectures he made a remarkably clear analysis of the successive cases in the federal courts construing this great statute, and showed how the narrow view of its construction and operation, which found unfortunate expression in the Sugar Trust Case (U. S. v. E. C. Knight Co., 156 U. S. 1, 15 Sup. Ct. 249, 39 L. Ed. 325) was gradually broadened until the court rested firmly upon the broad principles laid down in the Standard Oil and Tobacco Company Cases. He showed that the "rule of reason," which Mr. Justice Harlan, in his dissenting opinion in the Standard Oil Case, thought the majority of the court had imported into the statute, was but an inevitable application of a common-sense prin-

ciple well developed and clearly defined by the common-law courts long before the enactment of the Anti-Trust Act.

The final lecture treated of the decrees in the Standard Oil and Tobacco Company Cases, and showed that the provision of such decrees were being carried out in good faith, with the result that the percentage of business done by independent manufacturers of tobacco and refiners of oil has steadily and greatly increased.

Mr. Taft's final conclusion was that, while a trade commission or some similar device intended to afford information to the public and to business organizations with reference to the operation of the Anti-Trust Act might be advisable, yet any amendments of the act itself, involving specific definitions, as proposed by some members of Congress, would be highly inexpedient. He was of the opinion that the act as it now stands, made reasonably certain through the judicial conflicts of two decades, would much better preserve to the people free competition than would any amended act that would require possibly two decades of litigation before its meaning would be made clear.



The "legal clinic" established in connection with the Law School of the University of Minnesota in May, 1913, continues to grow in interest and promise. New cases are coming in to the Legal Aid Bureau at the rate of nearly two hundred a month. These cases present issues of fact and law of almost infinite variety, and afford the members of the senior class a wide and valuable experience in dealing with real clients and in getting cases ready for trial. The work of Mr. John C. Benson, instructor in Practice, in conducting this bureau, has been highly successful and won the approval of the many citizens of Minneapolis, who are watching with interest the development of this interesting and beneficent charity.



During the college year now closing, 125 different colleges and universities have been represented by students in attendance at the University of Chicago Law School.



The George Washington University Law School shows a steady growth under the administration of Mr. Gregory as Dean. Two years ago it registered 306 students; one year ago, 312 students; this year, 355 students.



During the summer session of the School of Jurisprudence of the University of California, Dean Robert L. Henry, of the Law School of the University of North Dakota,

will give a course in Administrative Law and a course in Bankruptcy, and Professor Manley O. Hudson, of the University of Missouri Law School, will give a course in Property.



The Boston University Law School has a full three-year course; but members of the Bar and college graduates whose work has included the equivalent of one year of legal study may complete the work of this school in two years, if they obtain an average rank ten per cent. higher than that required for graduation in ordinary cases.



A few months ago the Colorado School of Law received a gift by will of \$75,000 from Mrs. Charles Inglis Thomson, late of Kansas City, Missouri, widow of Charles Inglis Thomson, formerly Presiding Judge of the Colorado Court of Appeals. The gift is intended to found a professorship of law in the Colorado School of Law, to be known as the Charles Inglis Thomson Professorship, and will be available in perhaps a year, being charged upon some very valuable property in the city of Kansas City, Missouri. No restrictions are placed upon the manner of its use, but the gift is, as intimated, to found a general law professorship, as a memorial to Judge Thomson, in the discretion of the Board of Regents of the University. This gift, taken in connection with the gift some three years previously of \$55,000 by former Senator Guggenheim of Colorado to the University authorities to erect a building for the use of the Law School, and which the Law School is at present occupying, together with the gift of some \$350,000 by Andrew J. Macky of Boulder, Colorado, for an auditorium for general University purposes, is evidence of the liberality of Colorado citizens and the esteem in which its State University is held.



The University of North Dakota School of Law has begun the publication of a series of departmental bulletins, in which will be discussed such phases of the law of North Dakota, and of other states having the Field Code, as appear to be of exceptional interest to the lawyers of the state. The plan of the bulletin is to have a leading article by some member of the law school faculty or some member of the bench and bar of the state, subsidiary articles and notes on recent decisions prepared by members of the student board of editors, with a department of law school and alumni notes under the charge of the dean. R. W. Cooley has general editorial charge of the bulletin. The intention is to issue the bulletin quarterly, and it will be sent free of charge to all alumni of the

school and to members of the North Dakota Bar who desire it. The first number appeared in March.

L. E. Birdzell, who has been on leave of absence for two years, serving as chairman of the North Dakota Tax Commission, will return to his duties at the law school with the opening of the school year in September.

Joseph L. Lewinsohn, a member of the faculty for the last two years, has resigned, and will re-enter the practice of law at Los Angeles, California.



To the great regret of the Indiana law faculty, Professor Archibald H. Throckmorton has accepted a call from the Law School of Western Reserve University, and will leave at the close of the current year. Professor Throckmorton's subjects at Indiana have been Negotiable Instruments, Trusts, Guaranty and Suretyship, Partnership, and Public Service Companies. His successor at Indiana has not yet been appointed.



Henry Craig Jones has resigned from the faculty of George Washington University Law School to accept the Deanship of the Law School of the State University of West Virginia, his resignation to take effect at the end of the present year. He has rendered valued services and his departure is regretted. It is expected that two new men will be added to the law faculty for next year, giving their full time.



Mr. Warren F. Pillsbury, of the University of California, has been recently added to the law faculty of the University of Illinois. He is teaching the subject of Real Property.



R. A. Daly, of Chicago, who is well known throughout the law school world as an authority on Legal Bibliography, has completed a successful tour of some forty law schools in which he has given special instruction to the senior students on the Use of Law Books and How to Find the Law. Much benefit has been derived by undergraduate students from Mr. Daly's instructions in the different law schools. Following are some of the universities and law schools in which Mr. Daly gave instruction this season: University of Nebraska; University of Kansas; University of Texas; Kansas City Law School; University of Missouri; St. Louis Institute of Law; Western Reserve University; Washington and Lee University; National University; Georgetown University; University of Virginia; University of Pittsburg; Cleveland Law School; Washington University; Northwestern University; University of Oklahoma; Univer-

sity of Maryland; Columbia University; New York Law School; Boston University; Detroit College of Law; University of Indiana; Buffalo Law School; Yale University; Fordham University; Cornell University.



During the last fourteen years the Law School of the University of Pennsylvania has classified its students under these heads: College graduates; men who have spent one or more years in College; and men with a high school education. The general average of all the men is as follows:

College graduates	77.7
Men who have had one or more years of college, but are not graduates.....	73.1
High school graduates.....	75.5



The Summer Quarter of the University of Chicago Law School, in 1914, will continue from June 15 to August 28, the first term ending July 22. Courses will be given in Torts, Agency, Persons, Mining and Irrigation, Equity, Suretyship, Bills and Notes, Insurance, and Administrative Law and Officers. The course of instruction will be carried on by Professors Harry A. Bigelow, Walter W. Cook, Ernst Freund, and Dean James Parker Hall of the regular faculty, and by Professor Roscoe Pound of the Harvard Law School, Dean William R. Vance of the University of Minnesota Law School, Professor William U. Moore of the University of Wisconsin Law School, and Professor Chas. A. Huston of the Stanford University Law School.



The handsome new Law Building at the University of Oklahoma has been formally christened "Monnet Hall," in honor of Dean Julian C. Monnet, under whose direction the structure was planned and erected. Its dedication brought to Norman, Oklahoma, on March 4, visitors from all parts of the state, and a distinguished company of state officials and representatives of the bench and bar of Oklahoma. "To Dean Monnet," says the Oklahoma University News-Letter of March 5, "honors were paid without stint. He was praised as the directing force of a school where progress is almost unparalleled in educational history, as the guiding genius in the erection of the building which now houses that school, and as the man in whom all confidence is reposed as to the future growth and advancement of the School of Law."



The College of Law of the University of Southern California is planning a celebration of the tenth anniversary of its affiliation

with the University. The celebration will be one of the events of Commencement week in June and will take the form of a home-coming of the alumni. The school is closing its tenth year with an enrollment of 606; it closed its first year with an enrollment of 610.



Charles J. Hobart, of Roscoe, Illinois, has been appointed to the faculty of Southwestern University Law School, Los Angeles, California. Mr. Hobart is a graduate of Columbia University Law School.



The California Law Review, published by the faculty and students of the School of Jurisprudence of the University of California, has enjoyed a prosperous year. The article by the editor, Professor McMurray, entitled "Some Tendencies in Constitution Making," has attracted a great deal of attention throughout the United States.



After September 1, 1914, candidates for a degree in the Cincinnati Law School will be required, at the time of entering the Law School, to present proof of the satisfactory completion of one year's work or its equivalent in a College of Liberal Arts and Sciences.



There will be several changes next year in the faculty of the School of Jurisprudence of the University of California. Professor Orrin K. McMurray will spend his sabbatical year in Germany, studying the Continental systems of law and the European methods of law teaching. Professor George H. Boke will exchange for a year with Professor John Wurts of the Yale Law School. Professor Wurts will give the courses in Property and Conflict of Laws which have been given by Professor McMurray. Professor Barry Gilbert of the Iowa State University Law School has been called to a professorship in this school. During the next year, he will give the courses in Contracts, Equity, Trusts, and Damages. Mr. William E. Colby, lecturer on Mining Law, will give a course on Water Law during the second term. Dr. John U. Calkins, Jr., has been appointed lecturer in Commercial Law.



The Indiana University Law School has added to its law library a well-equipped statute law book room, for the comparative study of the legislation of the United States and England. It is hoped within a year to add the statutes of the English colonies.

"THE DIPLOMA PRIVILEGE." "Does the diploma of your school entitle a resident holder to admission to the Bar without examination by the State Board of Bar Examiners?" This question, submitted to various law schools, has brought some interesting answers.

The Law School of the University of Virginia, established by Thomas Jefferson, with all the privileges which he thought fitting to a state law school, answers with an exclamatory "No!" It was a tradition at the University of Virginia, in the days of John B. Minor, that the Legislature had offered the law school a full diploma privilege, but that the faculty had declined it.

The Cincinnati Law School, founded in 1833, answers: "No. Our charter seems to permit this [the diploma privilege], but the rule of the Supreme Court does not, and we do not want it or ask it."

The Law School of the University of Pennsylvania answers: "No. We especially requested that it should not."

The University of Colorado School of Law

answers: "No. A bill introduced for the purpose [of granting the diploma privilege] was opposed by the school and defeated."

The University of Michigan answers: "Yes; but after next year it will not. Formerly graduates of the University of Michigan Department of Law and of the Detroit College of Law were admitted to the Bar without examination. At the request of the Department of Law of the University of Michigan, this exemption of law school graduates has been abolished, and all applicants for admission to the Bar, except those who have practiced for three years in other states, are required to take the Bar examinations."

In some states, as in California and Minnesota, the State University Law School shares the diploma privilege with one or more other law schools in the state, but in at least two great states of the Union, Texas and Wisconsin, the State University Law School enjoys an exclusive diploma privilege. On the other hand, in a number of leading states, as Massachusetts, New York, Pennsylvania, Virginia, Ohio, Illinois, and Colorado, no law school has a diploma privilege.

Answers to Questions on Legal Bibliography and the Use of Law Books

By R. A. DALY

Of the Chicago, Illinois, Bar.

[Thirty Questions on Legal Bibliography and the Use of Law Books, prepared by Mr. R. A. Daly, were published in the Winter (1914) Number of the Review, together with an announcement to the effect that Answers to the same would appear in the Spring Issue. Hence the publication of the Answers at this time.—A. F. MASON, Editor American Law School Review.]

1. Table of cases cited in Labatt's Master and Servant, 2d Ed., refers to this case on page 3386, where a text treatment is found on the doctrine named. The same method shows a text treatment in Bailey's Personal Injuries (2d Ed.) page 1472.

2. (a) 1888. (b) 1888.

3. (a) 1869. (b) 1911.

4. A system of law reporting conducted by the West Publishing Company, covering every current case from the courts of last resort in this country, and some others (notably the cases of the New York Supplement), and annotating every point in every case, by use of the Key-Number, to all other cases on the point, past, present, and future, as long as the system continues. It began with the Northwestern Reporter in 1879, and since the advent of the Southern and Southeastern Reporters in 1887 has reported every case from

the courts of last resort in this country. The use of the Key-Number as a method of annotation in the system became universal in 1908.

5. In the Federal Cases.
6. All reported cases of Federal Courts below the U. S. Supreme Court from 1880 to the present time.
7. In the Federal Reporter.
8. The National Reporter System.
9. The latest advance sheet of the National Reporters. It is connected up with all other cases on the same point by the Key-Number placed at every point.
10. By the Table of Cases in the Decennial edition of the American Digest.
11. The Table of Cases in the Decennial edition of the American Digest shows this case to be reported in 64 N. J. Law, 240, 45 A. 692, 49 L. R. A. 572, 81 Am. St. Rep. 467.
12. Adams v. Batchelder, 173 Mass. 258, is also reported in 53 N. E. 824. Answered by use of Blue Book.
13. We find this case in vol. 7 K. N. S., and locate the case in 89 N. E. 169. The case is not reported in the state report.
14. A party established a quarry upon his property and moved away, leasing the property to another, who continued the business. Later on a third party moved into the neighborhood and brought action to enjoin the business as a nuisance, on account of the noise incident to the blasting and the scattering of the rocks upon the surrounding property. The original owner and tenant were joined as parties to the action. This case is found in vol. 12 K. N. S. Gathering the several points involved in the case, as shown in the table of cases digested in this volume, the above facts are disclosed.
15. By looking for a small number in brackets in the text of the opinion corresponding with the number of the syllabus covering the point.
16. By the name of the Reporter.

17. Abbreviations.	Jurisdiction.	Full Name of Reporter.
Wall.	U. S. (Supreme)	Wallace (John Wm.).
Wheat.	"	Wheaton (Henry).
Cush.	Massachusetts	Cushing (Luther S.).
Cushm.	Mississippi	Cushman (John E.).
Pick.	Massachusetts	Pickering (Octavius).
Pickle	Tennessee	Pickle (George W.).
Har. & G.	Maryland	Harris & Gill.
		Harris (Thomas).
		Gill (Richard W.).
Mart. & Y.	Tennessee	Martin & Yerger.
		Martin (John H.).
		Yerger (George S.).
Hill & Denio Supp.	New York	Hill & Denio.
		Hill (Nicholas).
		Denio (Hiram).
Woodb. & M.	U. S. (C. C.)	Woodbury & Minot.
		Woodbury (Chas. L.).
		Minot (George).

18. The American Digest, Table of Abbreviations and List of Reports. The New Edition of Cooley's Brief Making and Use of Law Books also answers the question.

19. James P. Metcalfe was a reporter in Kentucky, and Theon Metcalf in Massachusetts. (Note final "e" in Metcalfe in Ky.) The correct citation then would be 1 Metc. (Ky.) 1, or 1 Metc. (Mass.) 1.

20. The L. R. A. as Authorities is an elaborated Citator of cases in the L. R. A., originally published in separate volumes for the set. The Extra Annotated Edition segregates the citations for each volume and publishes them in the back of the volume. In some instances later citations are given.

21. No.

22. No.

23. The Key-Number.

24. The date of the cases in the last Annual Annotation.

25. The advance sheets of the National Reporter System.

26. By Words and Phrases Judicially Defined (the eight-volume work of that name) and the Cross-Reference head of that title in the American Digest.

27. The topic and paragraph or section number under which a given proposition of law is placed in the American Digest. It begins with the Decennial edition and applies to subsequent volumes of the system and the National Reporters. Under each Key-Number in the digests named is to be found the corresponding paragraph or section of the Century edition.

28. The salient word or phrase in a given statement of facts that best describes the real question in controversy, generally descriptive of the subject-matter, or parties, or cause of action, or object of action, or point in controversy arising in the trial other than the cause of action.

29. No. The Descriptive Word here, descriptive of the point in controversy, is Intoxication. This word in the Descriptive-Word Index directs to the topics and sections for the law (Key-Numbers), where the question has arisen under varying circumstances.

30. The Decennial edition, under the Key-Numbers given, will give all the cases covered by that edition. The Cumulative Table of Key-Number Sections will give the volumes of the Key-Number Series containing cases on the question, and the latest bound volumes and advance sheets of the National Reporters, by the Key-Numbers in the Indexes therein, will exhaust the cases to the very last published decision. The corresponding Century section numbers, as disclosed under every section of the Decennial and Key-Number Digests, will gather the earliest cases.

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An Intercollegiate Law Journal

A. F. MASON, Editor

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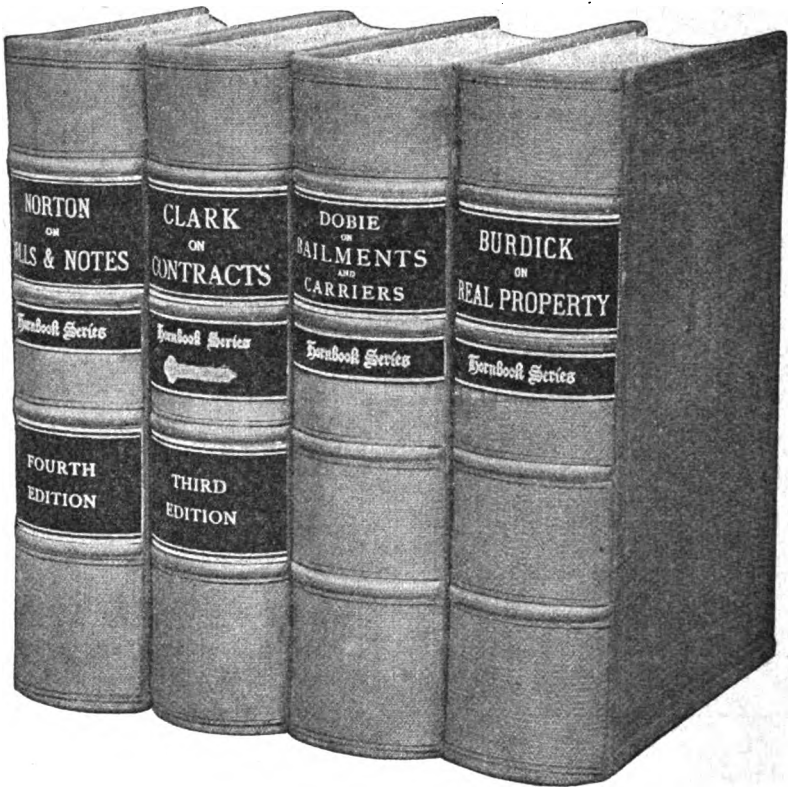
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A. F. MASON, Editor

Vol. 3

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No. 10

The Exaltation of Secondary Authority*

By WILLIAM M. LILE

Dean, University of Virginia Law School

EVERY lawyer knows the difference between primary or real authority and that class of so-called authority designated secondary.

Real authority is that officially imposed or accepted by the state as the rule of decision in juridical trials. It may be written, as exemplified in constitutions, treaties, statutes and ordinances; or unwritten, as found in the decisions of the courts, whose sole function it is authoritatively to declare and interpret it. Whether the courts make or merely declare the unwritten law, we need not here pause to consider. When one stops, however, long enough to compare the unwritten law of the present day with that of a century ago, he may well hesitate to assent to the ancient theory that the judges do not make the law, but merely discover and declare it.

Though much might be said as to the condition of our written or statute law, for present purposes we shall eliminate the written law from consideration, and

confine our attention to the *lex non scripta* or common law.

The main purpose of the present paper is to direct attention to some features of our modern legal literature, if the term be permissible, and to certain hindrances, as they appear to me, to a clear and accurate exposition of legal truth by those to whom, in the economy of our judicial administration, this delicate and important function is confided, namely, the bar and the courts, and to offer a few suggestions for the betterment of existing conditions.

Our postulate is that judicial decisions are the only sources and the sole authoritative evidences of the unwritten law, or, for purposes of our classification, judicial decisions constitute the only real or primary authority. We may say, then, with sufficient accuracy for present purposes, that every principle of the common law has its source and sanction from the adjudicated cases.

But there is a large and constantly in-

*Paper read by Mr. Lile before the Virginia State Bar Association.

creasing mass of so-called authority, avouched as evidence of the unwritten law, which we may designate as secondary authority. This class includes all extrajudicial efforts at legal exposition—such as text-books, encyclopedias, editorial annotations, obiter dicta of the courts, digests, etc.

Such has been the marvelous increase in the number of volumes of this secondary authority, even within the memory of those of us for whom life is yet in its prime, and such have been the influences, for good or ill, of this vast and ever-growing bulk of secondary authority, that it may be worth our while to consider something of secondary authority in general, and something of the nature of this flood of extrajudicial legal statement in particular, and its effect upon our jurisprudence. Is the flood a fertilizing one or the reverse?

To the lawyer of even a generation ago, the modern law library would present a bewildering aspect. He would find scores of volumes, with titles as new and strange as the uses they are meant to serve.

No one denies the value of scientific classification, and of philosophical comment on the decisions of the courts. But, howsoever honestly and intelligently done, no text-book or commentary can ever be other than what we term in the law of evidence second-hand or hearsay testimony. None knows this better than the secondary writer himself. On every page he confesses to be but trying to follow the decisions of the courts—feeling after the law, if haply he may find it. He may criticise a particular decision, or line of decisions, but he offers in lieu of the objectionable rule, not some principle from the depths of his own consciousness, but one assumed to be already judicially established. In short, our sec-

ondary writer is a self-appointed, unofficial compiler and interpreter, who undertakes to classify, condense and restate in his own language principles previously enunciated by the judges. Whatever in theory may be the *raison d'être* of these nonjudicial expositions, their chief purpose and use are to serve as short cuts to the law as found in the decisions. They are to the lawyer what translations of the classics are to the student.

Where such work is that of a sound lawyer, and is skilfully and conscientiously done, the result will be a valuable contribution to the science of jurisprudence. But, unfortunately for legal science, it is rare in these commercial times that the expert has the leisure or the inclination to assume the task of legal authorship. The result is that such work has largely fallen in the hands of those who adopt the vocation of law writing rather to eke out a livelihood than from love of the law.

Blackstone, Kent, Story, Greenleaf, Bishop, Pomeroy, Cooley, Minor and a few others have left an indelible impress upon our jurisprudence. Their works live after them. But in spite of the vastly widened field and the enlarged demand for legal research, these great writers have few successors. One may almost count upon the fingers of one hand, and certainly upon the fingers of two hands, the really philosophical law treatises issued within the last twenty years.

Undoubtedly marked progress has been made in the field of digesting and of classification. The completion of the American Digest, in which, under a scientific classification, effort is made to digest every reported decision of every American court of last resort, marks an era in the history of legal publications. Under its elaborate system of classifica-

tion, cross-references and other ingenious mechanical devices, one may in a few moments, and almost without effort, exhaust the primary authorities on any specific point.

Other valuable aids to the searcher after the desired authorities are the well-known encyclopedias and annotations to selected cases.

But none of these speaks authoritatively. They are but search-books—signboards, as it were, along the road to the real and only exponents of legal truth, namely, the decided cases. And he who is content to rely on these or other similar works as real authority has misconceived the function of such volumes.

Coming back to our line of thought—the lack of successors to the great writers of the past—it is not our complaint that secondary writing has languished in quantity. On the contrary, the bulk has enormously expanded, and to the making of such books there is no end. They are being published and exploited as never before.

The large majority of these volumes, however, are but inaccurate and inexhaustive digests. The chief ambition of those who put them forth seems to be to pad footnotes with a multitude of citations, the bulk of which are foreign to the principle asserted, or easily distinguishable, or dependent on local statute, or else are directly contradictory of the text. Where authorities are in conflict, little or no effort is made to distinguish or reconcile them, or by legal reasoning to demonstrate the true principle. Hence the wider the experience one has in the use of our current secondary authority, the more one distrusts it, and the more one is inclined to charge our modern law writer with the borrowing of his matter largely from digests and headnotes in-

stead of extracting it by brain sweat from original sources.

Nor is the explanation of the situation far to seek. As already suggested, our modern writer is a professional compiler. Often he is employed on a salary by publishers who have planned a particular volume or series, and who propose subsequently to exploit it as a commercial venture. Instead of authors seeking for publishers, as in former days, publishers now industriously seek for authors, and employ them on stated monthly or yearly salaries. Writing, as such an author does, for a livelihood, and not for fame or love of learning, his heart is not in his work. He sings, not like the linnet, because there is music in his soul, but for the sake of bread. Who wonders that his rhythm halts and his notes ring false? He and his publishers have discovered that, whether the work be good or bad, if the table of cases be voluminous and the volume be bound in sheep or buckram, lawyers will buy it freely, and courts will lend it a willing ear. Why, then, should our writer spend weary hours in the tedious task of studying his topic from original sources, when he may take his propositions ready-made, from the reporter and the digester, and by a mere mechanical process, without the expenditure of intellectual effort, produce his finished product in the shortest possible time?

Not all of our secondary authority is subject to this characterization. But I am assured that the larger part of it is, and that the commercial spirit of the age has entered deeply into the making of law books, until one may almost say that, in the main, the process is mechanical and the spirit commercial.

When we stop to consider how quickly, by the use of the American Digest,

along with its Table of Cases and its Key-Number System, plus a pair of scissors and a bottle of paste, one may construct a law book covering the whole field of a given topic, we are tempted to believe that, whatever debt of gratitude is owed to the enterprising publishers of this monumental digest, its influence in the encouragement of amateurs to enter the field of legal authorship has been, and will continue to be, a distinctly unfortunate one.

Thus far nothing has been said in extenuation of the errors and defects in even the best of secondary writing. As compared with the work of the judges, the former is prosecuted at a vast disadvantage. The court tries but one, or at best but few, questions in each case before it. These questions are (or should be) thoroughly debated, pro and con, by learned and industrious counsel, who, with the life, liberty, or property of the client at stake, are incited to exhaust every possible argument, and to cite, analyze, uphold, or condemn every authority that seems to bear upon the question or questions at issue. Thus every phase of each question is threshed out, and thus the court is supplied with material for a correct conclusion, and for the preparation of the opinion to follow. Besides, the judge to whom is assigned the preparation of the opinion has the advice and counsel of his colleagues, who, like himself, have been elevated to their high positions by reason of their pre-eminence in the profession. After such a threshing out of the question, first by counsel and then in the conference room, the chances of error are reduced to a minimum. And yet the testimony of defeated counsel or the evidence of overruled precedents is not needed to convict the most learned courts of occasional error.

If, then, with these safeguards, the decisions of the courts are not infallible, what are we to expect of even the highest class of text-writers, whose work is done in an altogether different environment?

In the first place, the text-writer is confronted, not with a single question, but with the whole field of his chosen subject, and with every conceivable question within the purview of his topic. He lacks the aid of oral debate and the written argument of counsel for study and reflection. He must by turns be counsel for either side, and then sit in judgment on his own arguments. He must grope through the books for himself in search of authority, which, when found, he alone must weigh and interpret. Nor do questions under investigation possess for him the life and interest with which they were clothed in actual litigation.

It is impossible, therefore, that our writer's work should even approach the faultless, howsoever honest and learned and industrious he may be. Indeed, we may rather wonder how much of error he escapes.

If what has been said thus far has any purpose, it is a threefold one, namely: (1) To animadvert upon the commercial spirit of our modern law book making, and the consequent deterioration of the quality of legal authorship; (2) to recall to your minds the functions of secondary authority as merely those of guides to the primary authorities, and as aids in the interpretation of them; and (3) to deprecate the growing tendency of the bar and of the courts to elevate the secondary writer to the high place of a law-giver, coequal with that of the judges themselves.

This tendency of bench and bar unduly to exalt secondary authority will

bear elaboration. In late years it is especially marked in the opinions of courts of last resort.

The decision of a court of final appeal has a far-reaching effect. Such a decision not only fixes the rights of the parties litigant, but it establishes a precedent that may become the measure of the rights of every citizen of the state or nation, and of millions yet unborn. When such a court is called upon to decide questions of right between man and man, and incidentally to incorporate a given principle definitely and permanently into the law of its local jurisdiction, it should not be content to justify the soundness of the principle, and to trace its pedigree from established precedents, by anything less than first-hand testimony. Hearsay evidence on questions of fact has long been under the ban of the courts, and I am almost radical enough to express the wish that hearsay legal statement might be brought into like condemnation.

When a judge of the appellate bench is thus tempted to trust to secondary authority in the preparation of an opinion, one might wish that some good spirit would whisper a word of caution into the judicial ear. This caution might be expressed somewhat as follows:

"This question rests on common-law principles. These principles are authoritatively expressed in the decided cases, and in these only; and the court means to apply the doctrine of *stare decisis*. The volumes containing the reports of these decided cases are supplied by the state, and are at the court's elbow. The industry and ingenuity of the modern digest maker has made these authorities readily accessible. They are fully cited in counsel's briefs—or, if counsel have not thus done their duty, they should be required to do it by supplementary

briefs. It is true that what purports to be a statement of the law of the case is found in the well-known series, 'Short Cuts to the Law,' with much expanse of cited authority. But the court knows nothing of the author of this particular article or text, possibly not even his name. Indeed, if named, the court is by no means sure that much of his work was not done by proxy. It is not unlikely that his expressed opinion that the weight of authority sustains a particular principle is founded on a comparative count of the paragraphs under this topic in the American Digest, with an occasional glance at the reporter's headnotes, and not by a careful analysis of the cases themselves. The odds are, therefore, that your honor has before you, not a second-hand statement of the law, but a statement at third or fourth hand. The secondary writers depend upon the courts, directly or indirectly, for their material. If the courts in turn take their material from the text-writers, the result is a process of breeding in and in that makes sure the perpetuation of error."

Opinions that ignore this whispered admonition, even if they providentially escape error, reflect little credit on the courts from which they emanate, and contribute nothing to the science of the law.

Much has been said in late years, illustrated by statistics, as to the comparative standing of the appellate courts of America. This suggests some inquiry into the characteristics of the judicial opinion that give it strength and permanent lodgment in the confidence of the profession at large.

While it is impossible to lay down hard and fixed specifications for the model opinion, surely every opinion should carry conviction on its face. Cases may occasionally arise, of so in-

tricate a nature, or in which authority and reason on the one side seem so nicely balanced by authority and reason on the other, as to render this test a too exacting one.

But, taking the cases as they normally arise, an opinion that does not contain within itself convincing evidence of the soundness of its conclusions on questions of law fails to completely accomplish its mission. The rule of law announced may be sound. The decision may settle the rights of the litigants. The principle established may become a local precedent until overruled. But there the influence of the opinion ends.

But an opinion may ignore secondary authority, and may rest its conclusions on the decided cases, and yet fail to measure up to our standard. A statement by the court that certain authorities cited sustain a certain principle—even though accompanied by quotations from the language of the opinions in the cases cited—lacks convincing force. In a later place objections to this method of attempting authoritatively to establish a legal proposition will be again referred to. The opinion is a departure from the ideal, unless there be an analysis of the cases on its very face, so that every reader may for himself follow the process and check up the results, without the necessity of testing the authorities cited in order to ascertain whether these authorities do in fact warrant the conclusion reached. Every student of the law knows how many judicial opinions fail on this last test—how often the authorities cited fail to sustain the propositions announced.

The chief good that comes from this analytical method of drafting an opinion is that the court itself tests its own work, and by thus reasoning from prece-

dent to precedent demonstrates the accuracy of its conclusions.

The writer of a judicial opinion from a court of final appeal has peculiarly strong incentives to set a high standard for his work. Justice to the parties is, of course, as it should be, the uppermost consideration in the mind of every judge—and the record of the judges of our day for purity of motive and freedom from improper influences has not been excelled in any age. A second consideration is the knowledge that the principle established is destined to become a measure of the rights of other litigants in other courts. And lastly is the thought that, unlike the ephemeral literature of the commentator, his own work, whether good or bad, will be preserved, and accredited to him by name, in the published and imperishable records of the court, to serve as a help or a hindrance to future searchers after legal truth, long after the author himself has passed off the stage of his judicial activities. A judge speaks, therefore, to and for the whole common-law world—and especially for its courts, practitioners, teachers, commentators, and students, and their successors to the remotest generation. Thus, with posterity for an audience, a judicial opinion is as imperishable as song itself. Mr. Justice Shallow lives for us only because Shakespeare embalmed him in the amber of his immortal drama. Our judges fix their own portraiture in the preserving material of the law reports, as the prehistoric mammoth has fixed his in the Siberian glaciers, or as some slighter congener in the granite of the hills.

I am not unaware of the clamor for brevity in judicial opinions. Our reports are growing in size and number, at a pace that already taxes our purses and

our library space. One stands aghast in the contemplation of another century of legal reporting. If opinions of the character described shall necessarily occupy more space, and thus increase the number of volumes of reports—which is not conceded—the effect will be but to hasten the solution of the already pressing problem of reform in law reporting. How this relief shall come is fortunately not within the scope of this paper. It is enough for us, in the meanwhile, to contribute each his mite toward the coming of that millenium for which every lawyer should strive, when law shall be a real science, and justice a certain measure.

It is almost an axiom that a case well argued will produce a good opinion. That a lean argument means a lean opinion is, in general, equally true. If, therefore, the bar of any state should at any time note a tendency toward lean opinions from its highest court, let it take thought of its own contributions to these opinions.

It is the business of counsel to supply the bulk of the material out of which the opinion must be constructed. If the material be unfit, and the result be disappointing, the fault lies more at the door of the supply man than of the builder.

What work does the bar expect of a court of last resort, in the preparation of its opinions? I think the question is answered in the character of the briefs which the members of the bar submit to the courts.

My position as teacher brings me a multitude of these briefs, from all parts of the country. Many of these are distinctly of low standard, and far from the ideal. Often the leading thought as they are laid aside is one of commiseration for the court.

Whatever other features a brief

should possess, there are three that seem of especial importance in connection with our topic.

In the first place, the facts of the case, as counsel believes them to be, should be stated at the outset. It is a trite, but true, saying that a good statement is a case half won. This statement should be clean and clear-cut, and should be revised and re-revised until every nonessential detail is eliminated, and only the essentials remain in distinct outline. Such a statement permits the court at the beginning, and without effort, to grasp counsel's theory of the facts, with reference to which his argument of the law is to be addressed.

This should be followed by a terse statement of the principle or principles of law which counsel conceives applicable to the facts.

Thus, at the inception of the argument, the court is in possession of counsel's theory of the facts and the law of the case, and prepared to follow him intelligently in the argument.

In beginning the argument of the law of the case, instead of plunging at once into the authorities, counsel should first address himself to the principles asserted and to the reasons which support them. As soon as an unfamiliar legal proposition is announced in argument, the mind of the court, true to its legal instinct, begins to debate within itself whether the proposition be sound or unsound. This seems the psychological moment, therefore, for furnishing the court with the legal reasoning upon which counsel conceives the proposition to rest. True, authorities to be quoted later are expected to sustain the proposition, with the reasons; but the sooner the court is put in possession of the principles involved, and the reasons upon which they rest, the more effective will

be the appeal to the judicial mind. Nor can one overestimate the value of this portion of the brief to the court, in reaching a right conclusion and in the preparation of the formal opinion. Special prominence should therefore be given to the argument on principle and reason, in advance of the discussion of the authorities.

Coming to a consideration of the argument on authority, it would be vain to condemn the citation of secondary authority in a brief. Nor is such practice here necessarily reprehensible. When counsel appeals to secondary sources, no such solecism is committed as when a similar appeal is made by a court of last resort. But such authority should be cited by the brief-maker as cumulative evidence only, and never at the sacrifice of primary authority. Indeed, as already suggested, a marvelous advance toward the evisceration of legal truth would be accomplished if secondary evidence in all issues of law were placed in the same condemnation with secondary evidence in issues of fact.

But it is in the handling of the precedents upon which counsel relies that the skill of the brief-maker is tested, and the aid rendered the court made most effective.

Observation leads one to the belief that, in a large proportion of the briefs filed in the appellate courts, counsel's methods of handling the precedents relied on serve as hindrances rather than helps to the court in its efforts to weigh and properly value the authorities cited. Conscious efforts to confuse or mislead the court are apart from our discussion. These belong to the domain of legal ethics.

To determine with accuracy the point or points which a given decision, of even a minor degree of intricacy, is a prece-

dent, requires a delicate legal sense, and a minute and painstaking study of every feature of the case as reported.

In pursuit of the elusive doctrine of a case, there are three chief features to be considered—the facts, the words of the opinion, and the decision. For the ascertainment of the doctrine established by the case, the first and last are generally of greater importance than the opinion itself.

No opinion is of value unless the facts upon which it is based are known. When the facts and the decision are known, the resulting rule of law may usually be deduced without reference to the opinion, save for the purpose of ascertaining what facts were judicially regarded as affecting the result.

For instance, if the facts are that plaintiff was injured by defendant's locomotive while trespassing on defendant's track, and that the collision might have been avoided had the engineer been on the lookout, and the decision is that defendant is not liable in damages for the injury, the resulting rule of law is at once apparent, without reference to the opinion, namely, that a railway company owes no duty of lookout to a trespasser. By a slight alteration of the facts, a different result may be reached—where, for instance, the engineer was aware of the plaintiff's danger, but made no effort to avoid the collision. Another slight alteration of fact, and again the defendant may escape liability—for example, the plaintiff, in full possession of his faculties, knew of his own danger, yet himself made no effort to avoid the accident. In each of these cases, the opinion is of little importance in deducing the rule of law applied, except for the ascertainment of the facts regarded by the court as material. It is therefore the facts and the decision, rather than

the opinion, that determine the true doctrine of a reported case.

It follows, then, that properly to understand the precise doctrine of a reported case, and to estimate its value as a precedent, a knowledge of the pertinent facts is vital; and the failure of counsel to possess himself of the precise facts, and to put the court in possession of them, is a failure himself to comprehend, or to assist the court in comprehending, the real value of the case as authority.

When the facts and the decision are compounded and tried in the crucible of legal analysis, the resultant legal rule is the doctrine of the case, whether the doctrine itself be sound or unsound. By no use of words can the court extend, limit, or qualify this result. As the compounding of certain chemicals produces a certain product, in spite of the incantations of the chemist, and as the tuning fork produces a certain note, unaltered by the uncultured ear that hears it, or the untrained voice that attempts to reproduce it, so the judicial disposition of a case, on a fixed state of fact, produces a doctrine which the court, by no words that it may utter in its opinion, can alter—a doctrine to be ascertained only by scrutinizing the facts through the medium of the decision. A certain combination of notes produces a musical chord. The silencing of a single note, or the introduction of a new note, may produce a more pleasing effect, but the old harmony is altered.

None but the poet may hear the music of the spheres. None but the legal artist may catch and reproduce the true harmonies of our judicial music.

I have already said that the court cannot, by any language of the opinion, or by any attempt to put into words the rule of law deducible from the decision, extend or limit the true doctrine of the

case. Indeed, it constantly happens that in deciding a case the court itself is unaware of the real doctrine it has applied, since there were other facts present in the case, but only subconsciously in the mind of the court.

Let me illustrate this: Imagine a court organized by the members of some monastic order, in the ancient days of courts of casuistry. A brother who for the day has been assigned some duty beyond the walls reports that he met a blind beggar on the highway, much in need of alms. He submits to the court the question of his duty towards the beggar. After argument the court decides that it was his duty to assist the beggar with alms. An opinion is accordingly prepared by the presiding abbot, justifying the decision, and announcing the rule of conscience to be that "it is the duty of each member of this order to assist blind beggars in need of alms." And this rule is entered upon the records of the court as a precedent for the guidance of the brethren in future cases.

Now, as will presently appear, this was not in fact the rule really deducible from the decision. The court may have thought so, and so stated in its opinion, but it discovers its mistake in the next case to be illustrated.

At a subsequent session of the court, another brother reports that on his errands of mercy he has met another blind beggar in sore need of alms, but that the beggar was a notoriously unworthy fellow, who would spend any alms bestowed in drink at the nearest wineshop. Again argument is had, in which stress is laid upon the former ruling; and the language of the court in stating it is quoted, namely, "it is the duty of every member of the order to assist blind and needy beggars," without qualification. But the court, now perceiving, for the

first time, the error, not in its decision, but in the broad form in which the rule was stated, decides that there was no duty in this second case, and orders the formal statement of the rule on the records to be amended so as to read thus: "It is the duty of every member of the order to assist blind and needy beggars, provided they are worthy."

By the time the brothers have familiarized themselves with the new rule as formulated, a third case arises, in which the blind beggar was needy and worthy, but the brother who encountered him was himself without means of aiding his distress. The two former precedents are quoted and pressed in the argument, but again the rule is qualified, and now made to read that "it is the duty of every member of the order to assist blind, needy and worthy beggars, when means of aid are at hand." And so the illustration might be continued indefinitely. As new circumstances arise, the language in which former precedents were expressed—which we now perceive to have been immeasurably broader than the facts or the decision warranted—becomes narrowed more and more until its original form may be wholly lost.

The real decision in the first case was one thing—the statement of it by the court was a wholly different thing. And so with the results in the cases that followed.

The same situation is constantly presented in our own precedents. The court itself misconceives the real note it has sounded until later examination, from a new viewpoint, discovers it.

The truth is, then, that the real principle for which a case is a precedent becomes apparent rather from the facts and the result than from the words in which the court formulates it.

So much for the important rôle that the facts play, and the less important part that the opinion plays, in fixing the doctrine of a reported case, and the consequent necessity of a minute knowledge of the facts, consciously or subconsciously present, in determining the true value of cases cited as precedents in legal argument.

It follows that no mere quotation by the brief-maker from the words of the court, howsoever strongly expressed, unless these reveal the precise situation of fact, will convey with certainty the rule of law for which the case is a precedent. When confined to the case in which it was used, the language may be ever so appropriate, and yet misleading when applied to a different state of facts. Besides, every lawyer knows that judges will occasionally go beyond the necessities of the case in hand, and express obiter opinions on irrelevant points. These extrajudicial expressions are universally condemned as not authority of the highest order. As already suggested, no court has power to decide any other than the case before it; and any attempt, consciously or unconsciously, to create a precedent broader than the instant case warrants, is extrajudicial, and ineffective as imperative authority.

The real doctrine of a case is found, then, not in what the court *said*, but in what the court *decided*.

Thus, in many words, and at the risk of prolixity, I have emphasized the important part that the facts of any decided case play, in fixing the value of the case as authority.

This has been not without design. The inducement to dwell at such length on what is familiar learning is that I am obsessed with the belief that most lawyers ignore it in the preparation of their briefs.

Coming back to our discussion of the use of primary authority in the brief, and making practical application of what has just been said in connection with precedents as authority, if you have followed the argument thus far, you will perceive the advantage, nay the necessity, in the interest of both the brief-maker and the court, of accompanying the citation of every case seriously relied on by a statement of the material facts. Or, to express the same idea negatively, you will recognize the unwisdom, in your own interest, and the unfairness toward the court, of filling your briefs with mere statements of legal rules, bolstered up by citations of cases, or by extended quotations from these, without a statement of the accompanying facts of each case.

In the absence of such analysis, citations of reported cases and quotations from opinions are but invitations to the judges to go to the library, find the volumes, search out the cases, and patiently work out for themselves the meaning,

relevancy and value of each—a task that should not be laid upon the judges, and one peculiarly incumbent upon counsel.

If the judges of our courts of final appeal, with dockets crowded and litigants clamoring for a decision of their rights, must choose between mental and physical drudgery of this sort, and recourse to secondary authority, the blame seems to lie rather at the door of counsel than of the court.

If the brief, on the other hand, contains a skilful analysis of the cases relied on, with the facts, the decision, and the reasons supporting the rule applied, the latter supported by quotations from the opinions—quotations which, preceded by a statement of the facts, are now luminous with interest—the brief not only becomes of vastly more persuasive force, but it lightens the labors of the court, furnishes greater security against error, removes the seductive influences of secondary authority, and makes possible the ideal opinion that demonstrates its soundness on its face.

John Bouvier and His Dictionary

1839--1914

IT RARELY happens that the announcement of the publication of a law book carries with it as much of historical interest and distinction as does the publisher's notice of a new edition of Bouvier's Law Dictionary by Francis Rawle, Esq.,* of the Philadelphia Bar. Since 1839 thousands and thousands of legal literary efforts have been announced, sold, filled their temporary spheres of usefulness, and have gone the way of all commonplace things. They are listed in the legal bibliographies as "O. P.," and are forgotten. It is noteworthy that the names of most of John Bouvier's American contemporaries as found in Marvin's Legal Bibliography, published in Philadelphia in 1847, are never seen in the pages of catalogues of current legal publications. Those who have survived and whose works have become legal classics can be listed on the fingers of one hand. The interval of seventy-five years has left us Bouvier's Law Dictionary, Greenleaf on Evidence, Kent's Commentaries, Story's Commentaries, and a very few others.

It will be interesting to recall that John Bouvier was a Frenchman, being born in the village of Codognan in the south of France in 1787, and that he was brought to this country at the age of fifteen by his father and mother who settled at Philadelphia. Owing to reverses suffered by his father, he was almost immediately compelled to earn his own living, and we find him, at the age of twenty-five, becoming a citizen of the United

States and the proprietor of a printing office at West Philadelphia. Bouvier was connected with various newspaper enterprises as editor and publisher until 1820. While thus busily engaged, he resolved to study law. The problems which confronted Bouvier in this undertaking were very different from those which are encountered by the law student to-day. Carefully prepared courses of study in schools of law conducted by trained teachers were not known. The student started by procuring access to Coke and Blackstone which he read at spare moments and mastered as best he could. Bouvier refers to his own difficulties in an interesting way in the preface to the first edition of his dictionary which was published in 1839:

"To the difficulties which the author experienced on his admission to the bar, the present publication is to be attributed. His endeavors to get forward in his profession were constantly obstructed, and his efforts for a long time frustrated, for want of that knowledge which his elder brethren of the bar seemed to possess. To find among the reports and the various treatises on the law the object of his inquiry, was a difficult task; he was in a labyrinth without a guide; and much of the time which was spent in finding his way out might, with the friendly assistance of one who was acquainted with the construction of the edifice, have been saved, and more profitably employed. He applied to English law dictionaries and digests within his reach, in the hope of being directed to the source whence they derived their learning; but he was too often disappointed: they seldom pointed out the authorities where the object of his inquiry might be found. It is true such works contain a great mass of information, but, from the manner in which they have been compiled, they sometimes embarrassed him more than if he had not consulted them. They were written for another

* See announcement in advertising pages of this issue.

country, possessing laws different from our own, and it became a question how far they were or were not applicable here. Besides, most of the matter in the English law dictionaries will be found to have been written while the feudal law was in its full vigor, and not fitted to the present times, nor calculated for present use, even in England. And there is a great portion which, though useful to an English lawyer, is almost useless to the American student."

Bouvier completed his studies and was admitted to practice in Fayette County in 1818. In 1822 he was admitted as an attorney of the Supreme Court of Pennsylvania. In 1836 he was appointed Recorder of the City of Philadelphia and in 1838 was made an Associate Judge of the Court of Criminal Sessions.

After his admission to the bar, Bouvier did not forget his determination to provide the legal profession in America with an adequate law dictionary. He worked upon the project from time to time and within the year after his appointment as a Judge of Criminal Sessions, he had "the satisfaction in 1839 of presenting in two octavo volumes the results of his anxious toils to his brethren and the world at large."

The work received the approval of eminent judges and lawyers, among them Justice Story and Chancellor Kent, the latter being quoted as saying, "After running over almost every article, I am deeply impressed with the evidence of industry, skill and judgment with which the work was compiled."

Samuel Austin Allibone, distinguished author of the "Dictionary of English Literature and British and American Authors," in a review of the work of Bouvier in the *North American Review* for July, 1861, pays high tribute both to the Dictionary and to Bouvier's *Institutes of American Law*, published in 1851. "The author of these volumes," says Allibone, "taught lawyers by his books, but he taught all men by his ex-

ample, and we should thereby greatly err if we fail to hold up for the imitation of all his successful warfare against early obstacles, his unconquerable zeal for the acquisition of knowledge, and his unsparing efforts to distribute the knowledge thus acquired for the benefit of his professional brethren."

In undertaking the preparation of a distinctly American law dictionary, it was necessary for the author to supply a great mass of material relating to the operations of our government, our constitutions and our political and civil institutions. As Bouvier says in recounting his early difficulties, a great portion of the current English dictionaries were almost useless to the American student.

"What, for example, have we to do with those laws of Great Britain which relate to the person of their king, their nobility, their navy, their army; with their game laws; their local statutes, such as regulate their banks, their canals, their exchequer, their marriages, their births, their burials, their beer and ale houses, and a variety of similar subjects?

"The most modern law dictionaries are compilations from the more ancient, with some modifications and alterations; and, in many instances, they are servile copies, without the slightest alteration. In the meantime the law has undergone a great change. Formerly the principal object of the law seemed to be to regulate real property, in all its various artificial modifications, while little or no attention was bestowed upon the rules which govern personal property and rights. The mercantile law has since arisen, like a bright pyramid, amid the gloom of the feudal law, and is now far more important in practice than that which refers to real estate. The law of real property, too, has changed, particularly in this country.

"The English law dictionaries would be very unsatisfactory guides, even in pointing out where the laws relating to the acquisition and transfer of real estate, or the laws of descent in the United States, are to be found. And the student who seeks to find in the *Dictionaries of Cowell*, *Manly*, *Jacob*, *Tomlins*, *Cunningham*, *Burn*, *Montefiore*, *Potts*, *Whishaw*, *Williams*, *Rastell's Termes de la Ley*, or any similar compilation, any satisfactory account in relation to international law, to trade and commerce, to maritime law, to medical jurisprudence, or to natural law, will probably not be fully gratified."

Bouvier's plan incorporated the technical expressions relating to the legislative, executive, and judicial departments of the government; the political and civil rights and duties of citizens; the rights and duties of persons, especially such as are peculiar to the institutions of the United States—for instance, the rights for descent and administration, the mode of acquiring and transferring property, and the criminal law and its administration.

This great mass of matter provided in effect a groundwork for commentaries on American law and institutions, and no doubt provided the inspiration for "Bouvier's Institutes." In addition, the enormous task of collecting and collating the purely legal terms and their definitions involved a vast amount of research and scholarly discrimination.

In spite of the unanimous approval with which his work was received, Allibone says that the author himself was the most rigid and unsparing of his critics. "Contrary to the practice of many writers, considering the success of the first and second editions as a proper stimulus to additional accuracy, fullness, and completeness in every part, in 1848 he was able to announce that he had not only 'remodeled very many of the articles contained in the former editions,' but also had 'added upwards of twelve hundred new ones.'"

In conclusion, Allibone gives this interesting bit of advice: "The lay reader will make a sad mistake if he supposes that a Law Dictionary, especially this Law Dictionary, is 'out of his line and measure.' On the contrary, the Law Dictionary should stand on the same shelf with Sismondi's Italian Republics, Robertson's Charles the Fifth, Russell's Modern Europe, Guizot's Lectures, Hallam's Histories, Prescott's Ferdinand

and Isabella, and the records of every country in which the influences of the canon law, the civil law, and the feudal law, separately or jointly, moulded society, and made men, manners and customs what they were, and, to no small extent, what they still are."

That in the eight years following Bouvier's death in 1851, six more editions were called for by the profession, is a tribute of so conclusive a character to the merits of the work that eulogy seems superfluous.

The first three editions of the Dictionary were prepared by the author. The fourth edition was prepared in 1852 from manuscripts prepared by Judge Bouvier before his death. The next notable edition appeared in 1867 and was prepared by a large editorial staff of the most distinguished lawyers, law writers and judges of the country. It was published by George W. Childs of Philadelphia, who was the son-in-law of Dr. Peterson, Judge Bouvier's son-in-law and literary executor. Mr. Childs in the preface of this edition says that it is his aim to vary in nothing from the general plan of Judge Bouvier, making only such modifications and additions in his work as changing conditions of the law seem to require. The period since the death of the judge had been so fruitful, however, in legislative enactments and judicial decisions, that numerous alterations and additions were rendered necessary, resulting in an aggregate increase of matter to the extent of more than fifty per cent. The editorial staff was so notable a one that it is difficult to select a portion for mention here without slighting the rest. The extent to which specialists were utilized is shown by the fact that Samuel Ames prepared the article on Corporations; F. C. Brightly, the article on Costs; Causten Browne prepared

the Statute of Frauds; Amos Dean prepared the article on Medical Jurisprudence; J. J. Elwell, M. D., prepared Malpractice of Medical Men, Medical Evidence, etc.; Judge George Gould prepared the article on Pleading; Chancellor Greene of New Jersey prepared Chancery; Theophilus Parsons prepared Contracts; Willard Philips, president of the New England Insurance Company, and author of "Philips on Insurance," prepared the principal articles relating to Insurance; Isaac Ray, superintendent of the Butler Insane Asylum, and author of "Medical Jurisprudence of Insanity," prepared the articles relating to Insanity, Idiocy, Imbecility, etc.; J. Ross Snowden, director of the United States mint, prepared the various articles relating to Coins and Coinage; Emory Washburn prepared Real Property; and Judge Ashur Ware edited the articles relating to Admiralty.

The editions of 1883, 1897, and the one just announced have been edited by Francis Rawle, a distinguished Philadelphia lawyer and scholar. Mr. Rawle was born in 1846, graduated from Harvard in 1867 and from the Harvard Law School in 1871. He was treasurer of the American Bar Association from 1878 to 1902 and its president 1902-03. He was chairman of the reception committee of that organization on the occasion of Lord Haldene's visit to America a year ago for the meeting of the American Bar Association at Montreal. Mr. Rawle was an overseer of Harvard from 1890 to 1902, is a member of the American Philosophical Society, and the author of various legal articles. Under his editorship the Dictionary has been expanded

and enlarged, particularly upon its encyclopedic side. His work has been so extensive that the editions which he has prepared have become generally known under the distinctive name of "Rawle's Revisions." In the editions of 1897 and the present edition, it has been the editor's aim to make the work a complete dictionary of the law and also to develop still more fully its encyclopedic side. Mr. Rawle says in his preface, that, so far as the prescribed limits permit, topics of the law have been fully treated, especially those in which the law has shown marked development in the last fifteen years. The new topics other than mere defined words and those which have received substantially new treatment number several hundred. Recent investigations in the early history of the English law and its relation to the Roman law have been used by the editor in the various titles which relate thereto. References have been fully supplied to learned monographs chiefly in the legal periodicals or upon subjects which could not be fully treated in the dictionary, in this way making available matter of great interest to the lawyer and the student.

The work has been much expanded and become in fact, as well as in name, a concise encyclopedia of the law and of legal information.

For forty years Judge Bouvier's dictionary was without an American competitor, and it stands to-day as the learned dictionary and compendium of the law, the source to which other authors have gone, and will still go, for inspiration and information.

What's Wrong with the Law?

By **ARTHUR M. HARRIS**
Of the Seattle Bar

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[Mr. Harris is the author of "Letters to a Young Lawyer," first published in the columns of the American Law School Review and in the West Publishing Company Docket, and later in book form.*]

WHEN a man's fifty, and his women relatives begin to say among themselves, "How is it that men can cling to a profession year after year without making any money?" you may be sure that the object of this oblique criticism is not enjoying what ascetics rather contemptuously call "material prosperity."

George Lester Mallot had a wife, several sisters-in-law, various aunts, a mother, and a mother-in-law. Twenty years before, when George was a newly admitted and rather promising young lawyer, all these gentle voices were blended in one happy chorus of encouragement and cheerful prophecy. But when George had humped the high hurdle of forty, and was prosaically distending at the girth and shrinking at the purse, the song of these sweet singers began to admit certain minor discords, which, when George had reached the fatal fixity of fifty, had become an open and vigorous clashing of tunes. The wife and the mother still loyally piped the old refrain of confidence; but the relatives-by-law shrilled their indignant disappointment in no uncertain volume. As for the aunts, they had discreetly withdrawn from the choir altogether, after the manner of discreet aunts in general.

On George's fiftieth birthday the

whole tribe assembled at his small, unprosperous house, bringing those cheap, twenty-five cent presents which feminine relatives bestow grudgingly on masculine failures; on husbands, fathers, brothers, and brothers-in-law, whose probable estates are the pittances of the insurance companies—"just enough to bury him, without having to pass the hat around, you know."

The pathos of the thing was that George accepted all these half-dozen gaudy neckties, two or three whisk brooms, and pipe racks from the ten-cent stores, with all the blushing, emotional gratitude of the simple, sincere soul, who denies himself cigars to buy the presents *he* gives, and who spends patient hours trying to think what best would please the puzzling psychologies of *his* beneficiaries.

Shrewd Mrs. George, knowing the pitying contempt behind the gifts, had to fight down the grief apple in her throat and keep back the indignant tears from her eyes.

And then at dinner, when George was presiding as happily and innocently as a petted child, caustic sister-in-law Mrs. Groll thrust in her cruel rapier: "Why do men stick to these professions when they can't make money?" George had been telling of the struggles of young lawyers, with a keen relish for the hu-

* "Letters to a Young Lawyer," West Publishing Co., pp. 198, leather. \$2.00 delivered.

mor which lies in every situation—and then followed the foregoing tart query.

"Sister though you be," thought Mrs. George bitterly, "I could tear that false red puff from your hypocritical head."

Really, everybody was rather shocked at Mrs. Groll's tactlessness. In justice to that hatchet-faced person, she herself felt conscious of a faux pas. The happy miracle of it was that George seemed not to have heard; evidently he had been preoccupied momentarily with some remote thought of his own.

That may be so or not, but that night George secretly searched the truthful mirror, turning away with the anxious, dazed, beaten look of a man who has been suddenly and distressingly stricken.

Such is, perhaps, the most tragic half hour of life. It humiliates a man more than the rejection of his young love; it is worse than anything which anybody else can do to him; it is the bitter Gethsemane he cannot share even with his wife. Even had his wife charged him with failure, it would not have struck George so woundingly as did his own realization.

"Never say die," is the sardonic jest with which the Grim Reaper gathers in the foolish optimist. There is not much recovery after the middle years; for the unsuccessful time means generally progressing weakness and increasing penury.

"George Mallot," said Judge Tierney, "is one of the best fellows alive, yet there is something queer about him, some weakness or other that hoodoos his whole life. Not a vice in the world, honest as noonday sunshine; good lawyer, too, is George—a worker and all that; but, dash it all, he's one of the misfits of the Bar. Can't figure him out at all."

Successful Judge Tierney had not practiced law a day in his life. From

First Ward politics he had graduated to a justiceship of the peace, and thence cunningly to courts of increased jurisdiction, and now had subtle wires working for the Supreme Bench itself. Scholastic Gamaliel trying to comprehend ingenuous Stephen!

Curiously enough, no one ever thought to ask the more significant question: "Why does not the practice of the law afford a more ample living to an honest, capable practitioner like George Mallot?" They all assumed that the whole secret was mysteriously hidden away in some obscure corner of George's psychology. Strangely, too, George had the same point of view. He did not regard the law as a possible circumstance of which he was the victim, but condemned something wrongly missing in himself. It is not possible to say how George would have fared in some other profession—as a doctor, say—because George was really a lawyer. It would be as logical to speculate on what degree of hardihood and skill he might have exhibited as an aviator.

If there was nothing wrong with George, and so acute an analyst as Judge Tierney said nothing was, at least, apparent, then something must have been wrong with the condition of the practice with which he was rather blindly struggling. Following this line one finds rather fruitful clues.

Let me make a solemn admonition at this point, if you please, my learned brother. For very particular reasons of my own, reasons of which you would approve if you knew them, I refrain from saying explicitly how much of this brief narrative is fact and how much fiction, or whether it is all fact or all fiction. I will ask you to believe, however, that it is true, as honestly true as Judge Tierney's noonday sunshine. Now, then,

what I record here of this man whom I have fancifully named Mallot, while true of him, may not be true of any other member of our honorable profession (and our profession is honorable, is it not? though our practice may not always be!). In other words, I am not making of this a sweeping thesis.

This account is just a slice of life, which you may see duplicated or you may not. I am averse to using the story form as a comprehensive thesis upon any given universal problem. I modestly, but sincerely, believe that the eminent Tolstoy erred in judgment when he attempted a sweeping critique of the matrimonial relation in his terrible tale, "The Kreutzer Sonata." That he must have seen his failure himself seems to me to be witnessed in the addendum to the authorized edition of that story, wherein he is compelled to answer the numerous letters he received by a plain, prose argument, really more dignified and effective than the fiction. So when I ask, "What is wrong with the law?" I propound that question only and strictly as it affected George Mallot.

The best evidence to lighten this problem is in two or three actual happenings in George's professional life.

When George, beaming and blushing, emerged from the law school, bearing victoriously the diploma of his bachelor's degree, and leaving behind an oral tradition of competent, almost brilliant, work, he was an intelligent, serious, and energetic young man, the kind of youth, as we have seen, concerning whom indulgent admirers are wont to wax glowingly prophetic. There were generally a few desirable openings in the college city, known to the Dean of the law school, and in these he placed his most competent graduates. This he amused himself by calling graduation "summa cum laude."

Never before had the worthy Dean placed a man with so much of a feeling of satisfaction as young Mallot in the law department of the C., S. & Y. railroad. When George assumed this position, the Dean sat placidly back, awaiting the glow of reflected glory which he expected to come from having developed so able a student. He could hear Head Counsel Shires saying to First Assistant Johnson: "Dean Murchison is certainly turning out some good material these days. Look at this youngster Mallot—"

Alas, for the pathetic uncertainty of poor humanity's hopes!

Now, Mr. Shires actually did make such a complimentary remark as the Dean had dreamed of, and that, too, in the course of George's first few months of employment with him. Unhappily he did not continue his approval.

The surface of this amicable intercourse first cracked over the matter of purchasing right of way for a branch line. The C., S. & Y. wanted to thrust one of its multitudinous steel arms into the heart of a rich, but untapped, wheat zone. Mallot and a youngster named Pendergast were sent out to try their hands at buying up the property, for the older men in the department were rather too well known in that general section. Their orders were to commence at exactly opposite ends of the projected line so as not to excite the natives' suspicions and provoke a consequent boom of prices. Mr. Shires made it his special business to watch their work like a hawk. Pendergast, a smart, designing young man, used his lean and starved appearance to feign illness; he would cough pathetically when dickering with a seller, and explain between asthmatical gasps that he was seeking a cheap ranch for the benefit of his health, but he couldn't pay that price—oh, dear, no—cough, cough,

cough — he was too — cough — blamed poor. He had a new stunt for every fresh quarter section that he happened on, with the result that he soon was submitting code propositions to headquarters, invariably ten, fifteen, and sometimes twenty dollars an acre less than his colleague at the other end of the line.

Mallot simply could not do business in that way. He worked faithfully and diligently enough, but always to exact value of the properties. He concealed his employment, of course; but it never occurred to him to secure estimates by affirmative deception.

Shires soon called him in.

"I'm afraid, Mr. Mallot, you are not — eh — well — experienced — or, perhaps, shrewd enough for this particular kind of work."

They put him to briefing, and a first-class briefer he made. He would read law with the zest that some people read novels. Canning has a couplet to the effect that there is more worth in one good Chancery decision than in a score of Mr. Pope's stanzas. George loved a good, clean, logical decision as the true architect loves the proportions of a symmetrical edifice.

But it was in this capacity that his esteem with Mr. Shires was finally and fatally cracked.

"Mr. Shires," said blunt George one day, anent an intricate appeal on which he was working, "we haven't got a leg to stand on."

Mr. Shires was shocked. When he recovered his speech he said gravely: "My dear young man, you must be a little more partisan and less philosophical, if you would succeed with us."

The end came quite naturally after that. Mallot boldly married a young lady he had met on his unsuccessful land

buying expedition and opened his own office for the general practice of law.

Now, if anybody wanted a strictly honest, competent lawyer, he went to George and received unquestionable satisfaction. After a few years of this independent practice George discovered harrowingly that the last thing a great many litigants want is an honest lawyer, and these same litigants appeared frequently to be the most profitable clients in the matter of fees. Oh, of course, they wanted lawyers who would be honest with them—but not with their opponents. George thought he had at last found the origin of that peculiar expression, "honor among thieves."

For instance, a woman strayed into his office one day, claiming to have been injured by the motor truck of a large brewery. George told her he thought he could get a couple of hundred dollars for her. She sniffed pityingly, and went out promising to "let him know to-morrow." Later George found she had gone to Coogin & Googe on the very next floor above him. These enterprising practitioners immediately ordered the lady home and to bed, employed three skillful physicians of their acquaintance, saw that the newspapers had a vivid story of her dreadful injury, and finally pocketed about twenty-five hundred dollars as their share of the verdict.

Poor George, and his beggarly two hundred! He would have felt almost guilty in asking the brewery for even that much. When the woman told Mr. Googe of her experience with Lawyer Mallot, he laughed and laughed and laughed. "He ain't no damage lawyer," he chuckled between grins.

Things got pretty bad for George. He was forty years of age, and his practice was diminishing to that alarming point

which spells actual Want with a big, sinister W.

One summer there his income did not average fifty dollars a month. He worried very much, and if a man's nerves were visible you would have seen that his were red and raw. Yet he simply could not bear to think of giving up his little office; he clung to that as desperately as a sea captain will cling to an infrequent command. There was not much in that office, but what there was was all neatly disposed of. His wife kept his Arts and Law diplomas over the fireplace at home.

On the office walls he had for decoration a framed picture of the United States Supreme Court Justices. A beautiful and fitting frame he had for the picture, which he regarded with unflinching reverence. What just and good men were they! Let the carper look at those intellectual, serene, yet humane countenances, and salute them worshippingly as the earthly symbols of heavenly justice. Every morning he dusted and polished its glass, every desponding hour that picture spoke to him of the high and noble things of the law. Carpers had looked at those faces and had endangered their friendship with honest George by critical, profane suggestions. Ah, well—

George grew to be fifty-one years old.

At this time James Bales, whose real name was Ignatz Baletzki, was looking for a lawyer. Ignatz was a Russian Jew, proprietor and manager of the "Universal Collection and Adjustment Company. Accounts Solicited. We follow 'em to Mars." He was willing to pay a lawyer a hundred dollars a month to attend to the legal part of the business—and George Mallot applied for the position.

His interview with the greasy, bejeweled little Hebrew was the supreme hu-

miliation of George's life. He got the position, but he told nobody of it, not even his wife. He did not relinquish his office, but at night, when he finally got away from Ignatz, he would hurry thither to polish up the beloved picture and read for a little while some splendid decision for its own intellectual quality. Of course, the new alliance was discussed among the Philipstown lawyers; but, tactfully and kindly, they avoided any allusion to it before George himself.

Nothing illegitimate about the work, you understand; but the mean, blood-sucking character of such businesses! So this was for George one of those sorrowful valleys which a decent man will uncomplainingly tread for the sake of his loved ones. Why did he not go into some commercial line? Wait, friend, till you are over fifty years of age and in George's fix, then see what welcome Commerce has for you.

But the end of this was inevitable. Little Ignatz rather feared his new employé, for George, sitting in that squalid office, was frozen into a severe and distant dignity. He could not thaw out to Ignatz, he could scarcely be civil even to the little pallid-faced and overworked Jewish stenographer. She for her part paid no sort of attention to this gruff, elderly bear; she was very vexed because her uncle Ignatz had not been able to find some congenial young compatriot of theirs for the position. Of the two or three collectors he saw little; they, like himself, were serious, elderly men of disappointed looks, and yet, as is usual with such people, showing no sympathy or kindness to one another.

At lunch time Ignatz and his niece left the office to George, while they dived off to some basement Kosher kitchen. It was in such an hour, about the end of

his first two weeks with Ignatz, that Herman Steffenberg and his troubles thrust themselves on George's notice.

Herman was an honest-looking little German with every index of hardship in his pinched personality. He came hesitatingly into the office of the Universal Collection Company, carrying a letter which Ignatz had sent him, threatening him with all sorts of terrors if he did not come in and settle his debt with the Combination Grocery Company in double-quick time.

The little man was in tears. He told the kind-faced lawyer such a story of privation and heroic combat with adversity, such a list of disasters, sick and dead children, infirm, aged parents, and a weak-minded wife, all resting in one huge burden on his incompetent shoulders, that the faith of George Mallot in the ultimate good of things was momentarily obscured. He could not believe—it was not possible.

"And how can I pay, vot?" concluded Herman wailingly. "I ged twelve—only twelve—dollars a week, for vork vot iss killing me py inches yed, eh?"

George, much touched, bade the little man skip off before Ignatz returned, and not to worry until Ignatz bothered him some more.

Back from lunch came Baletzki and the pallid niece. You could hear their throaty squawks far down the passage. George did not trouble to enlighten them about Herman's visit.

George was awfully unbusinesslike in this whole affair. He himself sighed over his want of sternness, over his susceptibility to the appeal of sorrow. Instead of immediately garnisheeing Herman's mean wages, as he should, no doubt, have done, he put the committee of Organized Charities on the case, and the poor, astonished, incompetent Her-

man found the pressure suddenly slacken with the unaccountable arrival of groceries, clothing, and small sums of money. Also kind-looking ladies came to ask how the poor old "grossmudder" was, as well as to place poor Mrs. Steffenberg in a competent state institution, where she would receive the care her necessities demanded. No one knows how many baskets of eatables were carried from George's own back door by one of the small, hungry Steffenbergs. "A worthy family, my dear; just a few things to eat, that's all," apologized George to his wife. She, good soul, did not need any apology; she had been doing that sort of thing herself for years, for some worthy object or other.

Certainly George had a strange way of practicing law.

The inevitable day, however, was merely postponed, not definitely eliminated. For Ignatz's clerical methods permitted none of the flies to escape which ever became enmeshed in the web of his "follow-up" system. Poor Herman was scared to death soon after by the receipt of the third and "Final Warning." He was given to understand that if he did not pay up forthwith he might expect to be hung, drawn, and quartered, the remains to be boiled in oil, and his presumptuous head affixed to a gable of the city hall as a significant example for all debtors so imprudent as to defy the extraordinary powers of the "Universal Collection Company. J. Bales, Prop."

Tremblingly, he came again to the office, and this time Ignatz himself was seated at the receipt of custom.

"I haf goot but twelve dollars a week," was the peroration of Herman's soulful plea for leniency. "How shall then I—we—all of us lif?"

"You pring me six dollars a week," said the generous Ignatz, "till all iss paid,

and I will not sue you, yet." Then, impatient of his halting English, he swung into German sentences, dotted here and there with Russian and English words like raisins in a pudding. Your Russian is generally a pretty adroit linguist. Ignatz hoped George knew no German, as he had his reasons for using that language. As it happened, George knew enough German to be highly edified by the exposition of the law of debtor's exemptions with which Ignatz proceeded to instruct the bewildered Herman. Roughly translated, Herman was told that the exemption law allowed him three dollars a week for the support of himself and family, but that kind Ignatz would allow him six out of his twelve dollars—just twice the amount the law allowed.

Thereupon George calmly corrected him. "That is a lie," he interrupted the voluble flow decisively. "Herman is allowed ten dollars a week on a grocery debt—he need bring you in no more than two dollars."

Baletzki permitted himself to get injudiciously excited. "For vy do you putt in, pig goat, eh?" he shrieked, clawing the air with his skinny fingers a few inches from George's unabashed nose. "Eh, pig goat?"

George was much disgusted. He gave Baletzki an irate push, which sent that person floundering into the waste paper basket, greasy hair, skinny fingers, rings, and all. Herman allowed himself the unusual luxury of a laugh. The pale stenographer arose, grasping a paper cutter as though it were a stiletto, prepared to expose some Gentile heart to the mocking sun.

"Pig!" screamed Ignatz from his undignified seat, pointing at George with a quivering forefinger. "Pig, you iss a chigen-hearted boob for der collection business."

So George again had plenty of time to polish up the Supreme Court's picture and to peruse those fascinating, but not very profitable, decisions. Ah, if people could only live without having to eat, how simple most problems would be! George confessed to a manly appetite. Incidentally, he was getting to look as grey as an old fox. Life, which even successful men oftentimes find burdensome, was weighing heavily on him. Happily, he possessed that inner reservoir of strength—a simple religious faith. Strange that they who suffer most are often most devout. One would suppose they would be irritated into revolt, but it does not happen so. The soul has secrets of her own.

We approach the last phase of this analysis.

We have gained a little light. Three separate witnesses have offered spontaneous testimony. Mr. Shires found George was not "shrewd" enough for certain purposes of a large corporation, and that word "shrewd" must be interpreted liberally. Mr. Googe, of Coogin & Googe, pitied George for being too innately fair-minded to take advantage even of a wealthy defendant; and Mr. Baletzki was certain that George was too humane to enforce the collection of an account in the face of suffering. Every one of these witnesses spoke obliquely; none, of course, was honest enough to make his criticism of George a criticism of himself. This fact increases rather than diminishes the value of such testimony.

One more witness is the last we have available.

Philipstown had a celebrated criminal lawyer by the name of Wurster—Randolph Wurster. A kind of a nice fellow, too; with a cleverness, though, that was more instinctive than moral. The bar of

any community consists of good lawyers and evil lawyers. The trouble is to distinguish between them. Very difficult. A rich lawyer is presumptively a wicked lawyer, but there are occasional cases in which this presumption may be rebutted. Wealth is not an infallible index of character. Neither is reputation; some of the most sinister crooks that ever signed the roll have been and are lawyers of the highest social and professional eclat. The point is that the practice of law rests so much upon the individual conscience that the professional defection is often too obscure for discovery.

Randolph Wurster specially defended guilty men. Very few trials had ever come in his way of men wrongfully charged. Most of his clients were in jail. The small percentage that he had saved sufficed to make him a good gambling chance among trespassers accustomed to eternal tight squeezes.

Wurster had known Mallot for a number of years; known him, as indeed most men did, as that peculiar puzzle, a man of industry and ability, and yet a professional failure. Wurster was not vain of his personal appearance. He indulged an envious sigh for the honest, candid countenance of his plodding friend; with a face like that, he thought, he could snatch victory from any judge and jury in the county. Those two cunning sculptors, Low Thinking and High Living, had chiseled his own physiognomy all too faithfully.

It was this very train of thought which led to George's introduction to the intimate business of criminal practice. Thought Mr. Wurster once, when in an exceptionally tight squeeze, why not borrow George's face for a little while? Why not bring that lamp of candor and probity into court to lighten the darkness

of his own mysterious ways? He sent over for George Mallot.

George's life was now one long financial crisis, but at this time his affairs seemed to have struck the cold, wet stones of basic hopelessness. A devout man, he answered Wurster's unexpected summons with a quiver of pious praise on his lips, as though, certainly, some help was to come springing to him from the void.

How nice, courteous, gently complimentary Wurster was! He had heard Mr. Mallot was something of an authority on some matters of law in which his client was involved, a criminal charge of an absurd character, really should have been made a civil issue, if there was anything at all in it. Yes, he understood Mr. Mallot was not a specialist in criminal law generally; in fact, did not remember ever having had the pleasure of seeing Mr. Mallot try out a criminal issue. Rather an interesting phase of the practice this criminal side. Really, many neat points of evidence—almost all evidence; every lawyer should indulge an occasional side glance at this practice, just for experience. Then human nature—how it was revealed on the witness stand! Fascinating, really—secrets of the heart, and all that, and all that.

And so George became "of counsel," and the particular grand larcener was put upon his trial. Senior Counsel Wurster placed the accused between himself and innocent George, and so George sat through the trial feeling very sorry for the poor victim beside him and shedding from his intelligent, kindly face a light not often seen in that dim well of despair.

The presiding judge was lost in wonder at this unique combination. He spent half his time on the bench wonder-

ing what had come over "old Mallot."

George had nothing to do with preparing or presenting the evidence in the case. Most of his witnesses he never saw before the trial. They all popped smoothly on and off the stand, as though worked by secret, but effective, strings. He conducted easy phases of examination, and, at the conclusion, addressed the jury for half an hour with the simple speech of sincerity. The whole thing dazed the county prosecutor; for him the whole of the Philipstown bar had suddenly gone wrong.

Mr. G. Larcener was duly and smoothly acquitted. George shook each juror fervidly by the hand and assured each that he had that day been a "true deputy of justice"—"whatever that is," thought the wondering simple ones.

George met Wurster and the client an hour or so later in Wurster's office. They were both warm with wine. Mr. G. Larcener wept copiously on George's

shoulder, holding both of his hands, and spluttering liquor over his collar.

"Say Mr.—Mr.—What's name," he gurgled, "Mr. Mallosh—that was fine—hic—speech. Made me sorry—y' un'er-stand, that I took the—the money. I—I wanted to be, y' un'erstand, the kind uv feller you was talkin' about, see?"

"Then you were really guilty?" gasped George, sinkingly.

"Hush, hush, m' friend," soothed the drunken man, "some one'll hear you. The pleece—hic—got long ears—all same jackasses."

George never put fingers on his share of the plunder. "Oh, well!" thought Mr. Wurster, "it's up to him. He's too nice for this business, though."

Epilogue.

George Mallot has found himself at last. He is a truly popular and successful law professor in his old college.

Teaching Law Without Experience at the Bar*

By J. NEWTON FIERO
Dean, Albany Law School

THERE has lately grown up an academic sentiment as to professional schools, which is insistent that lecturers and teachers who are active in their professions are not so well adapted to their work as law school teachers as are men who are fresh from their studies and who are assumed to make up for their lack of experience by their breadth of learning. This is especially true of the position taken by many educators as to medical schools. On that question I am not qualified to give an opinion, but this view

is also being pressed upon the prospective student and the bar by law schools in the main connected with large universities, whose staff of teachers almost necessarily consists in the main of men trained as such, with but little or no experience in actual practice, and who treat the law from an academic rather than a practical standpoint.

It is even insisted in many instances that the practice and procedure in the courts should not be taught in a law school, but should be acquired after

*From an address by Mr. Fiero before the Alumni Association of the Albany Law School.

graduation by the newly fledged lawyer solely at the expense of his prospective clients. On the other hand, I have always maintained that practice and procedure in the courts are the working tools of the profession, and that to instruct a man in the abstract rules of the law, without giving him instruction as to the manner of their application and enforcement, is very much like explanation to a prospective engineer of the functions and possibilities of a steam engine, without instruction as to the method of its operation. It would scarcely be deemed wise to place in charge of a passenger train a locomotive engineer whose knowledge of his engine was derived solely from books explaining its construction, and who had no instruction as to which lever should be used in going ahead, and which one for stopping or backing his train.

It would seem that the advocates of purely theoretical teaching have overlooked the fact that there were able lawyers in the days before law schools, when the only place for study was in the office of the practicing lawyer, and when the advice and assistance of a lawyer of experience was regarded as an important and necessary element in preparation for the bar.

Neither Sir Matthew Hale, Lord Thurlow, Chief Justice Mansfield, or Lord Chancellor Eldon had the benefit of a law school training. John Marshall's attendance at a law school covered but a few months at most, and the giants of the American bar, William Pinkney, William Wirt, Rufus Choate, and Daniel Webster, received their legal education in a law office. That the law school of to-day cannot wholly take the place of the law office is evident from the present requirement by the New York Court of Appeals that, except in case of men who have spent four years at college in ob-

taining a high degree of mental discipline, the student must serve a clerkship of one year continuously in a law office before admission to practice.

The fact is that the law school is an aid to the office, and not a complete and satisfactory substitute for the training which the student receives who is in actual contact with the work to which he expects to devote his life, and the happy combination of the advantages of the law school and the office is instruction at the school in both the law and the practice by men who have had experience at the bar. This is true not alone as to practice, but it is only the lawyer of experience who can know the relative importance of legal principles; that is, as to their application to everyday affairs and the necessity from a practical standpoint of enforcing upon the student mind those rules and principles which are not only elementary, but which relate to matters as to which he will be most frequently called upon to advise his clients and impress his views upon the courts on their behalf.

I venture to say that it is only the practitioner who can have a true perspective as to the topics embraced in the Common-Law and Equity Jurisprudence, so as to give to each the relative importance to which it is entitled in its presentation to the student body. Nothing so impresses the student as a live illustration from actual practice, bringing vividly to his mind the rule of law and its application, fixing the abstract proposition by its relation to the actual fact; and this is impossible unless a lecturer can draw upon his observation and experience.

This proposition is established by a glance at the relation which the practicing lawyer and the judge held to the law school in its inception, and which they continue to sustain toward it to-day.

at the Inns of Court, which in their day was the nearest approach to the modern law school, and the most eminent barristers then conducted discussions by students upon legal topics. A judge of the Court of Chancery of Virginia was appointed to the first law professorship in this country in 1779 at the instance of Thomas Jefferson. The founder of the celebrated Litchfield Law School in 1784 was Chief Justice of the Supreme Court of Connecticut. Chancellor Kent was appointed the first occupant of the chair of law in Columbia University in 1794. In 1770, James Wilson, then a justice of the Supreme Court of the United States, was appointed the first professor of law in the University of Pennsylvania. Judge Story was for many years the

School, while associate justice of the Federal Supreme Court; while the latest and a notable instance of the availability of the man of experience as a teacher of law is the selection of the lawyer and jurist, William Howard Taft as a member of the law faculty at Yale.

I do not question but that men of exceptional grasp and ability may succeed and have succeeded as teachers of law without experience at the bar. My contention is only that lack of such experience is a handicap, and that the theory that lecturers at a law school are the better for lack of experience and of everyday contact with men and affairs in the courts is fallacious, and that the contrary view is sustained by both reason and observation.

Legal Bibliography--An Essential in the Law School Curriculum

By *R. A. DALY*
Of the Chicago, Illinois, Bar

MANY a young man who has finished his preliminary education, passed the prescribed examination, and is admitted to the bar, and expects to earn his living by the practice of his chosen profession, seeks a position in some law office where he can get in touch with the practical application of what he has already learned, and better fit himself to push forth alone in the stream of untried experiences before him.

The first thing that confronts him is a statement of facts, upon which he is asked to gather authorities and present the material for a brief.

It follows that the young man who, with his knowledge of the law, can analyze this proposition, and with his knowledge of the books produce quick results, is the one most valuable to the busy lawyer.

The object of all education is, or should be, to fit the individual to confront and successfully solve the problems as presented in his chosen field of activity.

It seems to me, therefore, that the very first question for the professional instructor to solve is: "How can I best interest the student, and what, in my par-

particular line, shall the instruction be that will best enable him to pick up the work where I must necessarily leave him, and pursue the same with profit to himself?"

The mechanic must first get acquainted with the tools, and their use, handled in his particular vocation. What a tool chest is to the mechanic the working law library is to the lawyer. A multiplicity of books and the constant application of the principles of law to the ever-varying conditions of business and everyday life, as set forth in the multiplicity of books, calls for some means of ready access to the matter contained therein.

In answer to this demand, law book publishers devised what have seemed to them helpful methods of use by means of schemes of classification, mechanical and typographic devices, and their combinations, a knowledge of which opens these avenues of reference and transforms a task into pleasure. A lack of such information throws the searcher into a wilderness of chaos and confusion.

The demand for such knowledge has led many of the law schools of the country to insert a course on Legal Bibliography as one of the essentials of their curriculum. The day cannot be far distant when every law school worthy of the name will see that such instruction is one of the assignments of a regular resident instructor.

Nothing can help the student more in getting a start. The best possible way to help a man is to help him to help

himself. It may be true that, after many disappointments and sad experiences, the young lawyer may master the problem alone. Some of the best lawyers known in history never saw the inside of a college or law school in the preparation for their life work—notably John Marshall. No one would think of making this fact an argument why all should enter the bar in a like manner. Many a lawyer is bemoaning the fact that his school failed to give instruction along this particular line. This knowledge of the proper use of law books may be the key to the door of success to the young man, and the lack of it the cause of failure.

It has been the privilege of the writer to lecture in over sixty different law schools in the country upon "How to Find the Law." Nothing has been to him of greater inspiration than the voluntary statements received from those who have attended such course of the practical help it proved to be to them in their early experiences in the office.

Give the young men a practical send-off in their chosen profession. See that they are possessed with that knowledge that will enable them to choose intelligently, wisely, and economically those books necessary for a proper start in their profession. This cannot be done in glittering generalities, but concrete examples must be worked out in laboratory sessions by comparative use of the different systems and books presented.

Distribution of Lawyers (male) in the United States by State

(Compiled From the U. S. Census of 1910)

	Total Population	Total Number of Lawyers, Judges, and Justices	Age Period			Native White		Foreign Born	Negro	No. Persons to Each Lawyer
			16 to 20 Years	21 to 44 Years	45 Years and over	Native Parent- age	Foreign Parent- age			
Alabama	2,138,093	1,482	4	886	592	1,401	59	10	12	1,443
Arizona	204,354	333		188	145	240	69	21		614
Arkansas	1,574,449	1,348	4	742	602	1,239	67	22	20	1,168
California	2,377,549	4,871	9	2,782	2,080	3,152	1,262	441	5	488
Colorado	799,024	1,634	2	880	802	1,225	303	103	3	489
Connecticut	1,114,756	1,117		702	415	761	284	70	2	998
Delaware	202,322	179		103	76	160	14	4	1	1,130
District of Col.	331,069	1,521	8	877	636	1,136	261	58	59	218
Florida	752,619	711	5	432	274	616	54	27	14	1,059
Georgia	2,809,121	2,233	12	1,402	819	2,133	71	11	18	1,168
Idaho	325,594	563		360	203	399	129	29		578
Illinois	5,638,591	8,005	18	4,798	3,189	4,974	2,199	772	66	704
Indiana	2,700,876	3,594	8	1,950	1,636	3,033	457	82	22	751
Iowa	2,224,771	2,569	2	1,366	1,201	1,804	633	126	6	866
Kansas	1,690,949	1,765	4	788	973	1,451	228	64	22	958
Kentucky	2,289,905	2,664	13	1,506	1,145	2,425	182	30	27	860
Louisiana	1,656,388	1,230	7	745	478	974	218	25	13	1,347
Maine	742,371	855	1	444	410	734	88	32	1	868
Maryland	1,295,346	1,989	7	1,236	746	1,607	287	74	21	651
Massachusetts	3,366,416	4,382	6	2,863	1,513	2,839	1,203	312	27	768
Michigan	2,810,173	2,823	5	1,485	1,333	1,720	768	319	16	995
Minnesota	2,075,708	2,395	8	1,295	1,092	1,328	770	285	7	867
Mississippi	1,797,114	1,217	1	807	409	1,140	47	9	21	1,477
Missouri	3,293,335	4,535	12	2,542	1,981	3,637	723	148	26	726
Montana	376,053	621	2	406	213	422	145	52	1	606
Nebraska	1,192,214	1,448	2	648	798	1,007	327	109	3	823
Nevada	81,875	292		169	123	181	81	27	1	290
New Hampshire ...	480,572	407		205	202	326	62	19		1,058
New Jersey	2,537,167	3,215	17	2,056	1,142	2,212	750	238	15	789
New Mexico	327,301	385	1	207	177	317	51	17		850
New York	9,113,614	17,138	46	11,411	5,681	9,896	5,310	1,929	58	532
North Carolina ...	2,206,287	1,313	4	844	465	1,262	21	11	19	1,680
North Dakota	577,056	666	4	465	197	308	234	119	1	866
Ohio	4,767,121	6,129	9	3,396	2,724	4,631	1,201	258	39	778
Oklahoma	1,657,155	2,732	4	1,801	927	2,368	213	48	61	607
Oregon	672,765	1,306	1	792	513	983	231	88	3	515
Pennsylvania	7,665,111	7,180	5	3,979	3,196	5,491	1,363	300	26	1,068
Rhode Island	542,610	464		305	159	270	148	42	4	1,169
South Carolina ...	1,515,400	907	3	536	368	850	36	4	17	1,671
South Dakota	583,888	689		406	283	430	203	49		847
Tennessee	2,184,789	2,096	4	1,151	941	1,955	83	15	43	1,042
Texas	3,896,542	4,554	19	2,628	1,907	4,168	273	80	33	856
Utah	373,351	444	2	261	181	251	141	51	1	841
Vermont	355,956	380		180	200	323	50	7		937
Virginia	2,061,612	1,809	3	1,081	725	1,702	54	16	37	1,140
Washington	1,141,990	2,480	4	1,589	887	1,730	524	211	9	460
West Virginia	1,221,119	1,405	3	887	515	1,281	95	12	17	869
Wisconsin	2,333,860	1,867	5	1,055	807	892	801	169	4	1,250
Wyoming	145,965	204		126	78	152	41	10	1	716
	91,972,266	114,146	274	67,713	46,159	83,476	22,814	6,955	796	806

Distribution of Lawyers (male) in the larger cities of the United States

(Compiled From the U. S. Census of 1910)

	Total Population	Total Number of Lawyers, Judges, and Justices	Age Period			Native White		Foreign Born	Negro	No. Persons to Each Lawyer
			16 to 20 Years	21 to 44 Years	45 Years and over	Native Parent-age	Foreign Parent-age			
New York, N. Y....	6,401,434	10,563	37	7,544	2,982	5,007	3,813	1,093	50	606
Chicago, Ill.....	2,185,283	3,866	13	2,563	1,290	1,952	1,314	556	44	565
Philadelphia, Pa...	1,549,008	1,835	3	1,138	694	1,208	482	132	13	844
St. Louis, Mo.....	687,029	1,125	4	735	386	716	334	64	10	611
Boston, Mass.	670,585	1,341	2	925	414	745	424	156	16	500
Cleveland, Ohio...	560,663	826	2	598	226	481	234	100	11	679
Baltimore, Md. ...	558,485	1,055	6	728	321	769	216	55	15	529
Pittsburgh, Pa.	533,905	649	1	398	250	454	151	39	5	823
Detroit, Mich.....	465,766	833	3	534	296	423	281	118	11	559
Buffalo, N. Y.....	423,715	714	3	482	229	435	227	52		593
San Francisco, Cal.	416,912	1,150		736	414	570	456	122	2	363
Cincinnati, Ohio...	381,617	656	2	367	287	375	236	41	4	582
Milwaukee, Wis....	373,857	491	3	318	170	203	240	44	4	761
Newark, N. J.....	347,469	388	4	271	113	200	140	46	2	896
New Orleans, La...	339,075	510	2	306	202	323	156	19	12	665
Washington, D. C...	331,069	1,521	8	877	636	1,136	261	58	59	211
Los Angeles, Cal...	319,198	1,000	5	578	417	742	176	78	2	319
Minneapolis, Minn.	301,408	664	5	344	315	405	183	72	4	454
Kansas City, Mo...	248,381	925	4	561	360	728	151	35	11	269
Seattle, Wash.	237,194	955	1	628	326	671	195	82	5	248
Indianapolis, Ind...	233,650	598	3	371	224	482	88	12	16	391
Providence, R. I...	224,326	278		186	92	166	82	27	3	807
Louisville, Ky.....	223,928	448	4	303	141	340	82	16	10	500
Rochester, N. Y....	218,149	335		196	139	228	90	17		651
St. Paul, Minn.....	214,744	513	1	308	204	305	165	41	2	419
Denver, Colo.....	213,381	796	1	415	380	585	150	58	3	268
Portland, Ore.....	207,214	679		448	231	485	135	55	8	305
Columbus, Ohio...	181,511	447		261	186	371	60	9	7	406
Toledo, Ohio.....	168,497	303	3	194	106	219	74	9	1	556
Atlanta, Ga.	154,839	382	4	253	165	345	27	4	6	405
Oakland, Cal.....	150,174	337		204	133	209	95	31	1	446
Syracuse, N. Y....	137,249	363		260	103	246	110	5	2	378
Birmingham, Ala...	132,685	339		222	117	312	20	3	4	391
Memphis, Tenn....	131,105	314	2	200	112	254	39	8	13	418
Richmond, Va.....	127,628	223		135	88	203	12	1	7	572
Omaha, Neb.....	124,096	333	1	168	164	224	87	19	3	373
Nashville, Tenn....	110,364	223	1	130	92	193	15	1	14	495
Cambridge, Mass...	104,839	251		163	88	179	54	14	4	418
Spokane, Wash. ...	104,402	372	1	254	117	242	93	37		281
Albany, N. Y.	100,253	269	1	150	118	178	86	5		373

Trespass in Pursuit of Golf Balls*

An Interview with a Client

By A WORLDLY SOLICITOR

Worldly Solicitor (laying down letter).
—Well, the row's come at last—I thought my fiery old friend Colonel Boldwig would not be reasonable. It's a bad business and will not make him popular—however, that's his affair—I'll just see what I can find in the books about it before he comes—I don't expect to find much—Tom and I have pretty well thrashed the subject out.

* * * * *

W. S.—Yes, all right, Quiller, show him in (enter Col. B.). Ah! good morning—good morning—how goes—all right?—here, sit down.

Col. B.—I'm all right, thanks—I always am all right; people only get ill by thinking they're ill. Well, did you get my letter and all those silly letters—I sent you the whole correspondence—all those silly letters of that old fool Bogey?

W. S.—Yes—I've read them carefully. Colonel Bogey, I must admit, as secretary of the Eastminster-on-Sea Golf Club, writes—for a golfer—very temperately.

Col. B.—That's not the point. How dare he write me at all? What the devil is it to me if he and a lot of other silly fools choose to knock little white balls about with sticks and then run about trying to find them? What has it to do with me, sir? Why should I be bothered with the matter?

W. S.—You don't golf, do you?

Col. B.—Good heavens! sir, certainly not; do you take me for a lunatic? I hunt, I fish, I shoot; that, sir, is sport—golf, a silly game for lunatics, and from what I can see the silly fools don't seem to be able to play the game themselves.

W. S.—Well, it's all a matter of taste. Now, we have seen this trouble coming for a year or so and have often discussed it, and I have ventured to warn you that you should adopt a reasonable attitude.

Col. B.—Reasonable attitude, sir—reasonable attitude—I'm not the offender. What am I doing wrong? Why am I to be warned to adopt a reasonable attitude?

W. S.—Well, let's go over the old ground again. You are the freeholder and lord of the manor of Eastminster-on-Sea.

Col. B.—Where my father and his father and his father have lived, and lived in peace until this cursed silly game came along.

W. S.—Now, Eastminster-on-Sea, from a small fishing village, has developed into a golfing place.

Col. B.—And if it had not been for that grasping beast, Gredger, who chances to own the land fit for this silly game, there never would have been golf there.

W. S.—However, Mr. Gredger—also an old resident—

Col. B.—Old bounder.

W. S.—An old resident, having, no

*One of a series of articles entitled "Interviews with Clients," which has been running for several years in *Law Notes*, a popular legal magazine published in London for the benefit of English law students.

vourable terms, and is selling his land slowly for golf bungalows, and so on.

Col. B.—Curse him, yes, and destroying the place; not one foot of my land will I sell.

W. S.—Now, your garden—a very extensive garden—unfortunately juts out into the golf links, and is more or less in the way.

Col. B.—Dash it all, sir, I was there first.

W. S.—True, but still, there you are, so to speak, right in the way. A man driving off the first tee—

Col. B.—What, hitting the ball—which by the way they don't do—when it's cocked up on a little heap of sand?

W. S.—Yes, a man driving off the first tee may, if he pulls his ball—

Col. B.—What's that?

W. S.—Well, let's say, for your purpose, does not hit it in a straight line.

Col. B.—Oh! why pulls?

W. S.—It's a word golfers have borrowed from cricket; and if he pulls his ball a man from the first tee can quite easily pull his ball into your garden.

Col. B.—Yes, and then he has the d—

W. S.—Yes, the impudence either to come himself to fetch it or to send his caddie.

Col. B.—And this, mind you, in spite of my notice boards that all golf balls found on my premises will be forfeited, and other notices that trespassers will be prosecuted with the utmost rigour of the law.

W. S.—Well, you can't make your own law, my friend, by sticking up notice-boards. You don't acquire the right to forfeit golf balls by putting up a notice, and you cannot as a rule prosecute for trespass. The remedy for trespass is a civil action for damages.

for trespass. What about poachers?

W. S.—Ah! that's trespass in pursuit of game—one of the few cases in which you can take criminal proceedings for trespass—but there is no right to prosecute for trespass in pursuit of golf balls.

Col. B.—Well, I won't have it. I keep a man always at work at that end of the garden, and he's cuffed the caddies so hard that they won't come, and if a player tries to come he threatens to cuff him. But why should I be put to all this bother and expense—yes, expense?

W. S.—Well, why not let your man throw them back?

Col. B.—Why the devil should I keep a man there to throw back golf balls?

W. S.—Then let them come over the fence and fetch them.

Col. B.—And trample down all my vegetables and fruit. Why, the little devils of caddies in the summer time always used to look for lost balls in the strawberry bed. No, sir, I will do nothing. I intend to insist on my legal rights. What are they?

W. S.—Not an easy question to answer.

Col. B.—Well, you see, from Colonel Bogey's letter it may have to be answered now at any moment.

W. S.—Yes; I see things have come to an issue. Colonel Bogey is apparently playing the game. He writes that when the opportunity arises he shall personally call on you and ask for leave to come on to your premises to fetch his ball—that if you refuse to give him this leave he shall ask you to restore it to him, and that if you refuse to restore it he will bring an action against you for the return of his ball—that's fair warning. He is apparently prepared to make a test action on the point.

Col. B.—Well, let him, and be—

W. S.—Yes; only this letter raises the issue. He may pull a ball into your garden to-morrow and the question be raised at once.

Col. B.—Well, if a man throws stones on my land, that's trespass, isn't it?

W. S.—Yes.

Col. B.—Well, if a man hits a golf ball on my land, that's trespass too, eh?

W. S.—I suppose so. He wouldn't do it purposely.

Col. B.—Does it make any difference whether a man throws a stone on my land deliberately, or aiming at some other object it slips out of his hand and falls on my land?

W. S.—No; I suppose it makes no difference.

Col. B.—And it is the same with a golf ball; so that Colonel Bogey, if he—what do you call it?

W. S.—Pulls.

Col. B.—Pulls a golf ball either intentionally or unintentionally into my garden commits a trespass for which I can sue him for damages?

W. S.—Yes; but unless actual damage was done, for instance, your conservatory or glass houses smashed—

Col. B.—Which has happened more than once.

W. S.—Unless actual damage was done, you would only get nominal damages—say, one farthing.

Col. B.—But they would have to pay the costs?

W. S.—Unless the judge otherwise ordered.

Col. B.—Well, I'll take the risk of that, and as soon as Colonel Bogey admits that he has thrown—

W. S.—Pulled.

Col. B.—Same as thrown—or hit a ball on my land I'll sue him for trespass. Of course he has no right to come on my land.

W. S.—Probably not.

Col. B.—And if he does I can throw him out?

W. S.—Probably you can remove him from the premises without any unnecessary force.

Col. B.—And I am not bound to return the ball?

W. S.—Well, well, it's all rather difficult. I need scarcely tell you that there is not much law on this subject. Let's first discuss the point. Can Colonel Bogey come on your land to fetch a golf ball without committing trespass? Now, in an old case on trespass, *Anthony v. Haney*, 8 Bing. 186, Chief Justice Tindal said: "Where fruit growing in a hedge falls upon the land of another, the owner may justify entering to take the fruit. So, if a tree, in consequence of violent wind, or from natural decay, falls upon another's close, the owner of the tree may enter and take it. But in these cases the falling of the fruit or the tree are involuntary accidents, to which the owner is in no way accessory, and over which he has no control. If, however, a tree falls upon the land of a stranger, in consequence of the voluntary act of the owner in cutting it down, he cannot justify entering the stranger's land to take it." From these remarks it seems clear that if Colonel Bogey deliberately drove the ball into your garden he could not enter to retake it.

Col. B.—But that doesn't help us; the old fool never drives it deliberately into my garden, it's accidental.

W. S.—In a sense, yes, but it's not what the law would call an involuntary accident. Driving a golf ball, either intentionally or unintentionally, into another man's garden, is not quite the same thing as falling fruit or timber.

Col. B.—Not a bit, it's quite different.

W. S.—The old case of *Webb v. Beavan*, 6 M. & G. 1055, does not quite apply either. There, in an action of tres-

the purpose of viewing a mare, then in a stable in the yard, which had been recently stolen from him. Now, Colonel Bogey could not plead that the golf ball had been recently stolen from him; he might plead that he desired to identify his ball.

Col. B.—Which got there by his own act.

W. S.—True; and there lies a difference. Now I think we may take it that if Colonel Bogey enters your land without your leave he is a trespasser. These cases do not appear to justify entry to fetch a chattel which gets on to your land through his own act. Now let us consider whether you must either give him leave to come and search for his ball or return it to him.

Col. B.—But I don't know which is his beastly ball. I've baskets full of 'em.

W. S.—It's possible that he had some private mark on it. He may be able to identify it. Now, must you either let him come and search, or return the ball to him?

Col. B.—Of course he would have to prove that it was on my land.

W. S.—Certainly. He and his caddie—his opponent and his caddie, probably—would be able to swear that it fell on your land. Now, must you either let him enter or return the ball?

Col. B.—That's it.

W. S.—The clearest exposition of the law which I have found is as follows. I've got the book here, Salmond on Torts (2d Ed.) p. 150 [reads]: "It is a matter of some doubt how far the right of retaking chattels will serve to justify an entry on the land on which they are situated. It is clear, indeed, that if the occupier of the land has himself wrongfully taken and placed the goods there, the owner of them may enter and take them"—you did not do this. "But what

but merely refuses to give them up, or to allow the owner to enter and take them, as in the case of a tenant who gives up possession of the land, but leaves a chattel behind him, and then seeks to recover it? This is a question that has more than once come before the Courts, but has not yet succeeded in obtaining a definite and comprehensive answer."

Col. B.—That's very unsatisfactory.

W. S.—The learned author refers to many authorities: *Patrick v. Colerick* (1838) 3 M. & W. 483; 49 R. R. 696; *Anthony v. Haneys* (1832) 8 Bing. 186; 34 R. R. 670; *Blackstone's Comm.* vol. iii. 5; *Webb v. Beavan* (1844) 6 M. & G. 1055; *Wilde v. Waters* (1855) 16 C. B. 637. His own opinion is that there can be no real doubt that if the occupier of land on which the plaintiff's goods have in any manner come—mark, have in any way come—refuses either to deliver them or to allow the plaintiff to enter and take them, he is liable to the plaintiff in an action of trover.

Col. B.—Oh! then that learned chap is dead against us?

W. S.—I am afraid so. Now, tell me—does the man you keep there collect these balls at once?

Col. B.—No; you see, I only keep him messing about that end of the garden when golf is going on to see people don't trespass; well, he doesn't pick the ball up, but just waits until he comes across it any time when he's working, and then throws it into a basket.

W. S.—I see. Now, let us take an actual case. Colonel Bogey next week pulls a ball into your garden; it lies in the open and can be identified; he then calls and asks permission to come on your land; you refuse; he and other witnesses swear to the ball; if he sues you for its recovery, according to Mr. Salmond, he

will win. Now let's take another case. The ball undoubtedly falls into your garden, but is lost; he asks leave to enter and search; you refuse; can he sue? Apparently, yes, if he can prove that his ball did fall into your garden.

Col. B.—What if my man can't find it? What if it is never found?

W. S.—Ah! there you have me; it seems to me absurd to hold you liable for trover of a chattel you have not found yourself.

Col. B.—Most unjust. Why should I be bothered with their silly game? If they can't hit a ball straight let 'em lose it.

W. S.—By the way, what do you do with all these balls?

Col. B.—I don't know. I don't want to know. I think Gibbs—that's my head gardener—gives 'em to the caddies he has had to cuff—a long time after.

W. S.—Oh!

Col. B.—But look here, that bookie chap—that learned lawyer—doesn't seem quite sure, and I can see you're not quite sure that Bogey will win if he does sue me—so I'll fight; let Colonel Bogey sue me for his ball. I'll fight—we'll have it out—we'll settle the beastly point one way or the other.

W. S.—Very well—as a lawyer I don't object—it seems to me there is another course to adopt; a way to score if you like, but I'm afraid you won't agree to it.

Col. B.—What's that?

W. S.—Give Colonel Bogey leave to come and search for his ball at some time convenient to yourself—say before you and your family are using the garden—say six in the morning, provided he does no damage. Let Gibbs and another man meet him; offer no assistance; mark down exactly what he does, and if he treads down beds and destroys vegetables or fruit or flowers, then sue him for damage. It is only an idea of mine, and I am

not sure of my law, but it seems to me that if a man by his own act puts his chattel on my land, and I give him permission to enter and search for it, he must so conduct his search as to do no damage to my property. If you don't catch him first time you will be certain to in the long run, and when they all know what your practice is—to give permission to enter, but to sue for any damage done—I think you will find they will drop it, but I warn you that if only nominal damage is done and you only recover a farthing, a judge might deprive you of your costs.

Col. B.—Gad! but that's a good idea. I'll run the risk of the costs. I'll do it. But after all, that doesn't get rid of the expense of keeping a man there to see that they don't trespass.

W. S.—No. I suppose you couldn't turn a couple of dogs loose in that garden?

Col. B.—They destroy the garden so.

W. S.—There's another point just struck me. I think, perhaps, if we went to the Chancery Division we might get an injunction to restrain the captain and secretary and committee from using or allowing members to use the first tee as at present placed—it's an off-chance, but I think worth trying.

Col. B.—Gad! let's have a go for it. Would that cost much?

W. S.—No; one could make that application for a moderate sum.

Col. B.—Well, then, by all means let's try it. I'm quite ready to spend a few hundreds.

W. S.—Oh! we shan't want hundreds. Shall I do it?

Col. B.—Certainly.

W. S.—But why don't you sell and clear out?

Col. B.—Certainly not, certainly not. Why the—Why should I be compelled to leave my home because a lot of

silly asses can't hit a little ball straight?

W. S.—Have you ever tried to hit it straight?

Col. B.—Of course not; I'm not a lunatic.

W. S.—Your land will fetch a big price now as building land.

Col. B.—No, sir. I'm neither to be bullied nor bribed into leaving. I'll fight, sir. I'll stand on my legal rights.

W. S.—Very well, very well. You know I'm a silly lunatic—I try to play the silly game.

Col. B.—Yes, it has always surprised me that you—

W. S.—Well, well; we all have our little weaknesses. Now, I happen to know the captain of the Eastminster Golf Club. Do you forbid my seeing him about this difficulty?

Col. B.—I cannot forbid, I neither ask nor forbid; but mind, no overtures for peace in my name. Remember, I fight, sir—I fight.

W. S.—Yes, yes, I understand. Now keep your temper when Colonel Bogey calls.

Col. B.—I shall not see him. Simpkin, my butler, has instructions.

W. S.—Good; probably I shall see Swift, the captain, to-morrow. I'm dining with him in town, and I will explain to him exactly the position you take up.

Col. B.—Do, do; and tell him I mean

fighting, sir, I'm for fighting. I'll have an injunction against him—that's what I'll have. And now we must await events. Good-bye, my friend, good-bye. When will you come and spend a week-end with us?

W. S. (laughs).—What? and have a round on the links with you?

Col. B.—No, no; I can motor you over to a little bit of fishing I've got—we can go on Saturday.

W. S.—Good, good, that will suit me—whenever convenient.

Col. B.—I'll consult Mrs. Boldwig and write you. And now good-bye.

W. S.—Good-bye, good-bye, remember me to your wife and daughter.

Col. B.—Thanks, yes, good-bye. (Exit Colonel Boldwig.)

* * * * *

W. S.—Now there's a pig-headed old devil for you; however, it is rather hard on him—they really ought to shift that first tee at Eastminster—I'll see Swift and talk it over with him—he's more reasonable than old Bogey. Yes, I'll try to get him to shift the tee, and if he won't—well, then we shall have to fight, and a very pretty little fight it will be—it's a bit of a deadlock—expect a judge will ride off on some side issue—I should if I were a judge. (Enter Quiller.) Eh? What? Who? Mrs. Marmaduke Magenta?—oh! well, show her in.

The Trial of a Lawsuit

By H. P. SMITH

Lecturer on Practice, Creighton College of Law

THERE is no place where individuality counts more than in the trial of a lawsuit, and the man who undertakes to try a case the way some one else does will surely come to grief. You should try your case in your own way, giving full play to your own individuality—be a lawyer, and not an ape.

The first requisite for a successful trial is absolute confidence in your own case, for if you have not this confidence you cannot inspire it in another. The man who has confidence in his cause is thrice armed. I recollect hearing one of the judges of the Supreme Court say concerning a certain lawyer that it was dangerous to attempt a decision at the conclusion of the argument, because the man was so impressed with the righteousness of his own cause that he was liable to make the court believe he was right, whether he was or not.

Some twenty-three years ago I attended a meeting of the Lancaster County Bar at the time of the dedication of what was then the new courthouse at Lincoln, and I have always remembered two remarks made at that time by old Judge Mason, one of the pioneer lawyers of this state. He said there were two points which he wanted to impress on the young lawyers in his audience: First, the importance of brevity; and, secondly, the danger of cross-examination. He said: "When I began the practice of law I was imbued with the idea that I must tear the other attorney's witnesses to pieces on cross-examination, and must talk to the jury half a day; but after twenty-five years' experience I want to say to you that in ninety-nine cases out

of one hundred cross-examination helps the other man's cause, and it is a rare case indeed that justifies an hour's argument."

Judge Mason was right. The average lawyer, both young and old, goes into the trial of his cases with the erroneous idea that on cross-examination he must tear his adversary's witnesses to pieces, but in ninety-nine cases out of one hundred his cross-examination only strengthens his opponent's case.

Don't accuse a witness of deliberately testifying falsely. We sometimes hear of witnesses who commit perjury; but perjury is, after all, a rare offense, and a very difficult one to prove.

Don't make the mistake of cross-examining aimlessly. You would not think of putting a witness on the stand for examination unless you had some distinct object in view; it is just as essential in cross-examination that your questions be directed toward a definite point. Do not cross-examine with your eyes closed, firing in a hit-and-miss fashion; you are simply wasting time and accomplishing nothing. Unless you have something definite in mind which you hope to bring out on cross-examination, don't cross-examine.

Sometimes a witness develops such hostility on cross-examination that he is willing to go almost any length in his testimony, and you may lead him into extravagant statements; but this situation is very rare. Better have a specific point in view than to grope aimlessly about in the hope of uncovering something which will help your case. I think it is the common experience of judges and lawyers that more cases are lost than won on

hit something; but as a rule he hits only himself and his client. Therefore be careful in your cross-examination, and unless you know what you are going after don't cross-examine.

In the argument of the case to the court or jury, the shorter the argument, the more to the point, the better you accomplish your task. I have known lawyers who would have a whole mass of testimony written out, which they would read to the jury. This is a waste of time and energy; the jury knows the testimony, for they have heard it. Better take one or two essential facts in your case and pound them into the jury than try to cover a hundred facts. As a rule there are not very many disputed questions in a case, and if you impress your view of these facts upon the jury, digressing to show the inconsistency, inaccuracy, or unreliability of one or two witnesses on the other side, you will do infinitely better than if you tried to cover the whole field.

Never say that the other attorney's witnesses are perjurers. I don't think a lawyer has any right to accuse his opponent or the opponent's witnesses of perjury. You hurt yourself by the accusation. If a dozen men saw a dog fight and tried to tell about it, no two of them would agree on the story. The very fact that they disagree about the affair is the best evidence that they are telling the truth. If four or five witnesses would go on the stand and tell about the fight, agreeing as to the minutest details, you could be reasonably sure that the evidence was doctored. If the witnesses have been inconsistent, call the jury's attention to this fact, and ask them what they think about it, but don't express your own opinion.

In your argument be short. Be crisp.

jurors' minds are settled before the arguments are made, and a long harangue is likely to injure rather than help your cause.

In closing, I want to emphasize again the danger of cross-examination, the importance of being brief, and the necessity of being yourself if you would succeed. There is no activity which offers more play for individuality than the practice of law, whether in or out of court. But, above all, don't be an imitator; be natural; be yourself, and you will be more successful than if you are merely a copy of some other man.

Several years ago I read an article written by an Englishman on what he termed "The Coming Men of Great Britain." This was shortly after Sir Charles Russell had made a splendid name for himself in the trial of Charles Parnell. The writer did not mention the name of Sir Charles Russell among the coming men of Great Britain, but at the conclusion of his article he said: "If the reason were asked why Sir Charles Russell is not mentioned in this account as being among the coming men of Great Britain, I can only say that I know of no honor which would equal that of being the acknowledged leader of the English-Speaking bar."

We might not be willing to admit that Sir Charles Russell was the acknowledged leader of the English-speaking bar, but I think we will all agree that no greater tribute could have been paid to him than to say in the words of the writer that he was the acknowledged leader of the English-speaking bar. I can wish you no greater success than that, wherever you go and wherever you practice, the community may say of you that you are the acknowledged leader of the bar of that community.

A Law Student's Criticism of the Case Method

By *LESLIE CHILDS*
Of Chandler, Indiana

AS AN example of putting the cart before the horse, the present mode of teaching the case method in the schools of the United States takes first prize. In most of the schools that pursue this system of instruction, the student is given each day a certain number of cases to read. These cases are supposed to illustrate a given doctrine of the law.

The looking up of these cases, and the reading of them, requires no special skill, aside from understanding the technical words and phrases used therein. The student is expected to come to class with the case in mind, so as to be able to recite on it by giving the facts, then the law as laid down by the case. These cases are usually given and studied to supplement the reasoning as given in the text-book that is taught in connection with them.

Certainly the recitation on a case, where the ratio decidendi is given, followed by an examination of the dicta, then a comparison with other cases, and possibly with some criticism, is useful, and develops the student's power to think on his feet. But it is more a training for the memory than for the reason.

Most graduates of law schools are familiar with, and can give, the elementary principles of any branch of our law. But that same student, when confronted with a state of facts that vary in some degree from the broad rule as laid down by his text-writer, is lost. His not knowing the law that applies to a certain set of facts is not the sad feature of the

situation, for that might happen to the most able practitioner; but the fact that he does not know where to look for the law is pathetic.

Now for a suggestion. Would it not be better to give the student a set of facts, and require him to find a case whose facts ran parallel or were analogous with them, than simply to give him a case, with the law and the facts all classified and ticketed, for his inspection? I anticipate the objection that the above method requires too much time, in relation to the ground covered, and the further objection that that manner of teaching is really brief-making, and that the schools are rapidly adding that subject to their courses.

Now, as to the objection of time. Would it not be of more lasting benefit for the student to brief one set of facts, even though it took him a day—I am assuming that the statement of facts would not be one requiring a very deep search—than simply to read half a dozen cases? Would he not be compelled to use his reasoning power more, in the making of a brief of this kind, than in the reading of fifty cases?

Another thing, the most important of all, remains to be taken into consideration. The tools of the present day lawyer comprise a wonderful collection of digests, reports, text-books, and encyclopedias. The simple mechanics of these books is a study within itself, and no practitioner can hope to succeed without mastering them.

The simple reading of cases does not

*From the Green Bag.

teach one the use of law books, or the mechanics of the digests, nor does it give him an inkling of the thousand and one little things that the expert brief-maker will use every day. But after a student has briefed one point of law, he knows where to find it ever afterwards. And in the briefing of that point he has touched the edge of possibly a dozen other subjects, in such a way that he will know where to look for them if occasion demands. Also, in order to find his point he has been compelled to use the books, and to use them in the manner lawyers use them.

It is not claimed that the reading of cases should be dispensed with. That would be impossible under any system. But it is urged that the reading of cases does not give the student the instruction that the other method would in the same time. It certainly is a poor way of teaching the use of the books, and the habit of attacking each problem as an individual, both of which the student must sooner or later learn.

The result of the present method is the turning out of graduates who are bewildered when confronted with a strange set of facts. If they cannot classify them, and have not had a case in which the same points were decided, they don't know where to begin their search in the books. And the young lawyer has simply got to learn a whole lot that he should have been taught along with other subjects while in school. Would it not be better, and wouldn't the student cover more ground in briefing fifty cases, than if he merely read and recited on five hundred?

Now as to objection number two, that teaching by the proposed method is really brief-making, and that the schools are rapidly adding that branch to their courses. An examination of over fifty an-

nouncements, taken from the leading law schools of the United States, shows a little over 15 per cent as having a course that in some way attempts to teach what is suggested here. And that course is, almost without exception, tucked away at the end of some light term, and in no school, whose announcement was examined by the writer, was it given the time in proportion to its importance.

Here is a subject on the proficiency of which the young lawyer's success or failure depends, and for the most part it is left to the student's own initiative whether he learns anything about it or not. If he is not of an inquisitive turn of mind, and prone to outside investigations, he may pass his examinations in a creditable manner, receive his diploma, and leave the law school as uninformed as he was when he entered respecting the use of law books. He will have the learning about the law, but he will be ignorant of the use of the tools. Then is it any wonder that he cuts his hands when he tries to use them?

"Oh," the stock expression is, "he'll naturally learn how to use the books." Some people seem to think that a knowledge of the use of law books comes without an effort. But after watching the performance of several hundred different lawyers in court, the writer is convinced that a good percentage of them did not know where or how to find the law. It was either that, or they were too lazy to look it up, and one dislikes to think that.

Hon. Horace E. Deemer of the Supreme Court of Iowa says: "Brief-making is an art in which there are few masters. I have been amazed at the helplessness of law students, and even of lawyers, when they go into a library to search for authorities. A good lawyer is one who knows where to look for the

law, and after he has found it knows what to do with it. Law schools should teach their students how to do these things."

The writer has had the use of a large law library, and has seen attorneys who had been engaged in practice for years come into that library and be compelled to get instruction from the librarian on how to use many of the books. They did not know how to brief a set of facts, did not know how to look up the law in a thorough manner, or exhaust the authorities on a given point. Surely when they went into court, with the kind of a brief they were capable of preparing, they did not go there with that assurance of being right that an attorney ought to have.

Of course the attorneys alluded to in the above are not engaged in the most

lucrative practice in their states, and their names have no special significance, but they are the rank and file of the profession. They are in the fold from which are selected many of our public officers, and in many instances they are elevated to the bench.

Certainly there would be a great difference in the product of the schools if the time that is devoted to teaching the case method as it is taught to-day was given to fitting cases to facts, instead of reading so many cases. Then when the student left his school he would be a master of his tools. And when the client stumbled into his office, with a set of facts badly tangled, the young attorney would know where to start in order to unravel the tangle. And with that knowledge firmly implanted in his system, he is on the high road to success.

As It is Done in the Court of Last Resort

By HARVEY D. JACOB
Of the District of Columbia Bar

THE hands of the clock, resting just above the American eagle immediately behind the Chief Justice's chair, point to 12. The court crier's gavel is brought heavily down with the words, "The Honorable, the Supreme Court of the United States," and as those seated in the courtroom arise to their feet and silence reigns, from a small anteroom to the north quietly approach those few of our countrymen in whose hands are daily placed the cords which bind us together as a great nation, and who consider, determine, and construe the principles upon which our American institutions are founded, daily deciding matters involv-

ing the liberties and fortunes of the American people.

Robed in black gowns, they solemnly approach the bench, headed by the Chief Justice, and, passing around to the rear, take their seats at the nod of the Chief Justice while the impressively spoken words of the crier are distinctly heard throughout the room: "O yea, O yea, O yea! All persons having business before the Supreme Court of the United States are admonished to draw near and give their attention, for the court is now sitting. God save the United States and this honorable court!"

The room in which the court now sits

the Senate to seek larger quarters in consequence of the gradual increase of its membership by the admission of new states. The Supreme Court room was at that time what is now its library, directly underneath.

The furnishings of the present court room, while rich in design and quality, are quite simple. The room itself is a semicircular arrangement, with a low domed ceiling. Ionic columns of Potomac marble form a loggia, supporting a gallery on the east side. In front of these columns is "the bench" consisting of a slightly raised platform on which are placed nine large, comfortable chairs, immediately in front of which is a desk extending the full length of the bench and upon which the Justices keep their dockets, records, etc.

The Chief Justice occupies the chair in the center of the bench, and the Associate Justices are seated four on his either side, the oldest Associate Justice, in point of service, occupying the chair nearest to the right of the Chief Justice, and so on. In front of the bench are located the tables and chairs of counsel, with a limited number of seats set apart for members of the bar. At one side of the bench will be found the desks of the reporter, marshal, and court crier; while on the opposite side is situated the desk of the clerk of the court.

Extending around the rear of the room on both sides of the general entrance door, are seats for spectators, who every day while the court is in session come into the room by the hundreds, stay for a few minutes, and then move out again noiselessly, for quiet must be observed in the Supreme Court of the United States, especially by those whose presence is by courtesy rather than by right.

tices, John Jay, John Rutledge, Oliver Ellsworth, John Marshall, Roger B. Taney, Salmon P. Chase, and Morrison R. Waite, and these constitute the entire wall decorations.

The court meets on the second Monday of each October and sits until the latter part of May. It usually hears the argument of cases for three or four weeks, and then takes a recess for two or three weeks. This recess is believed by the public generally to mean a vacation, but such is not the fact; for during these recesses the Justices do their hardest work—that of writing the opinions in cases which have been heard or submitted on brief, decided, and assigned at the argument sessions.

When the court is in session, it assembles every day, except Saturday and Sunday, promptly at 12 o'clock. The first few minutes are consumed in the hearing of applications for admission to the bar and other motions, at the conclusion of which the regular call of the docket assigned for the particular day is begun. As the cases are called they must either be passed for reasons satisfactory to the court, argued or submitted on briefs.

When a case is submitted on brief (and a great many are thus disposed of) the counsel simply mention this fact, and the printed record (for all matters must be printed before presentation to the court), briefs, etc., are by the clerk laid on the desk in front of each Justice. If a case is to be argued, the court allows counsel on each side a certain length of time, varying according to the importance or magnitude of the question, within which to present the matter.

At 2 o'clock the court takes a short recess for luncheon, reappearing at 2:30

and immediately resuming the transaction of its business, which continues until 4:30, at which hour, and it may be said at which minute, matters it not what may be the situation with respect to the case before it, it arises and adjourns until 12 o'clock the next day.

Upon the conclusion of each day's work the records, briefs, etc., in cases that day heard or submitted, are gathered together by the messenger of each Justice and carried to the Justice's residence. Singular as it may seem, Supreme Court Justices have no offices, save such as they personally provide in their own residences, and it is here that the cases are studied out by each Justice individually and separately and prepared for consultation, as likewise are all petitions for writs of certiorari and applications for writs of error.

Every Saturday during the argument session is consultation day, and at 12 o'clock on this day the Justices all assemble in the consultation room, which is separate and distinct from the court room, and behind locked doors discuss and consider each individual motion, application, case, etc. When a decision is reached—and by a decision is meant a majority with the same view of the particular matter—the case is assigned to one of the Justices voting with the majority for the writing of the opinion of the court.

So much of the time during the argument session is taken up with the hearing of cases and the study and preparation of them for consultation that there is but slight opportunity afforded for the writing of opinions during such argument sessions, and it is for this reason, as already stated, that the recesses are taken.

When a case has been decided in consultation and assigned for opinion, the Justice to whom it is assigned must again

study it and sift it down to its very foundation and then write out the reasons of the court for deciding the case this way or that. Of course, the time consumed in the preparation of these opinions, as well as their length, varies, governed more or less by the importance of the matter and the difficulty of the question at issue.

When an opinion is written out by the Justice (and each has his own particular method of writing them, some with and some without the aid of their secretaries), it is sent to the printer, who is a private contractor and not a general government employé, but who has been doing the work for many years; and in order that its contents may be closely guarded and kept from the public until the proper time comes, it is cut up into sections and distributed among several typesetters, so that no one of them sees the opinion in whole. And when it has been set up in printed form, a proof is returned to the Justice sending it, who corrects and revises it, and then returns it to the printer for final copies. When these final copies are received, one of them is forwarded to each of the other Justices, who examines it and notes on its back the fact of his approval or disapproval. And after these copies have all been returned, the work is finished and the opinion ready to be handed down.

Every Monday is opinion day, and the opinions are handed down on that day, the Justices having opinions simply announcing from the bench after court has opened that they are directed to deliver the opinion of the court in case number blank, so and so against so and so; and after reading the opinion or the important parts thereof, they hand it to the reporter, who has it published in the Supreme Court reports.

Each Justice has his own secretary and

his messenger goes to his successor. Some of these messengers have been in service of the court for many years.

In the doing of all things above specified the secretary aids the Justice so far

entirely ignorant of the existence of such a thing as the Supreme Court of the United States, and to politely turn to a discussion of golf or bridge when asked as to the workings of that court.

Notes and Personals

The next meeting of the Section of Legal Education of the American Bar Association will be held in Washington, D. C., on October 19, 20, and 22, 1914. The sessions will be held in the mezzanine gallery (Pennsylvania Avenue front) of the New Willard Hotel.

MONDAY AFTERNOON, OCTOBER 19, at 2 O'CLOCK.—A session for State Bar Examiners and Law School Teachers, under the auspices of the Section. Opening remarks by the Chairman of the Section, Charles A. Boston, of New York. A paper on "The Historical Evolution of the Board of Law Examiners, and its Influence on Legal Education," is to be read by Robert M. Hughes, of Virginia. A paper on "The Results of a Comparative Study of the Examination Questions Framed by State Boards of Bar Examiners," is to be read by I. Maurice Wormser, of New York. Special discussion of the topic presented in the last paper will be opened by Lawrence Maxwell, of Ohio, and Harlan F. Stone, of New York.

MONDAY EVENING, OCTOBER 19, at 8 O'CLOCK.—A session for State Bar Examiners and Law School Teachers, under the auspices of the Section.

A paper on "The Diploma Privilege" is to be read by George E. Ballhorn, of Milwaukee, Wis. A general discussion of the topic presented will follow. In connection with this discussion an opportunity will be offered for the presentation of resolutions relating to either the afternoon or the evening session.

TUESDAY AFTERNOON, OCTOBER 20, at 3:30 O'CLOCK.—Annual address of the Chairman of the Section, Charles A. Boston, of New York.

Presentation of the final report of the Committee on Standard Rules for Admission to the Bar, by Lucien H. Alexander, of Pennsylvania, Chairman.

A Symposium: "The Importance of Preserving in our System of Legal Education the Professional Ideals which are Dependent upon Apprenticeship in the Law."

(a) "An Existing Defect in the American

System of Legal Education," by Hampton L. Carson, of Pennsylvania.

(b) "The Probationary Period in France," by Paul Fuller, of New York.

(c) "The Referendar System in Germany," by

(d) "Preserving the Professional Ideal in England," by

Discussion of the reports and the papers presented.

THURSDAY AFTERNOON, OCTOBER 22, at 3 O'CLOCK.—A paper on the "Essentials of an Act Regulating Admission to the Bar," by

Discussion of the propositions submitted in the final report of the Committee on Standard Rules for Admission to the Bar, and action thereon.

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The next meeting of the Association of American Law Schools will be held in Chicago on December 28, 29, and 30, 1914.

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A COURSE IN "PROBLEMS OF CONTEMPORARY LEGISLATION"

The Subject.—The subjects of inquiry and discussion are *legal* problems. This is worth emphasizing, because it must not be supposed that the course is intended or allowed to introduce into the law school curriculum any research in the economic, social, or political field as such. The materials concern the American lawyer's profession as he finds it to-day and in prospect. And they concern topics that the student has already met in the usual courses, in their judicial and not in their legislative aspect.

The list of topics in the printed List of Topics and References sufficiently shows this feature. Each of them involves one or more well-known rules or body of rules already familiar as part of the present law. Its aptness to present conditions has been questioned. The problem is, not merely to ascertain

the validity of the criticism, but to determine what specific changes of rule would be needed to meet any criticism that may be found valid.

Thus, the work of the course involves a review of the existing rule or rules, a precision of its defects, and a shaping of its changes. The work involves materials which are as distinctly legal (in the sense familiar to American lawyers) as the materials of any lecture course. And it constantly reveals to the student how merely partial has been his grasp of the rule while he was studying it in only its static and not its dynamic aspect.

The topics vary, of course, in the extent to which existing decisions and statutes form the main part of the discussion. But in each of them the problem is primarily a lawyer's problem, e. g., such topics as the Income Tax, the Minimum Wage, and the like, are strictly excluded.

The Object.—To put into convincing words the multiple object of the course is not easy. But it must be explained at the outset what it is *not*. It is *not* a "seminar" for the purpose of conveying information on the pros and cons of any one of the topics. Some colleges probably have such courses. They should not be mistaken in purpose for this one.

1. A main purpose is to open the mind of the young lawyer to the thought that dozens of important legal rules have a legislative aspect, which he to-day ought to reckon with. The course aims to make him *sense* this. Having been kept strictly down (in the usual curriculum) to an analysis of the decisions, their history and their logical connections, in the effort to ascertain merely what the law is (not what it ought to be), and to argue in lawyerlike fashion towards the logical result of prior precedents applied to new cases, he tends inevitably to think of law exclusively in this aspect. And he must now be initiated into the other aspect.

How necessary is to be that other aspect, for the skillful leadership of the profession in the coming generation, need not be urged here. Those teachers who do not feel it keenly will take no interest in this course. Those who do will feel it invaluable for the training of the coming generation of leaders at the bar.

This object then is not to convey information on important topics. It is to introduce the advanced student (i. e. at a stage of his legal education when it is safe to do so) to a new way of thinking about law.

To attain genuinely to that understanding, the natural and sufficient method is for him to spend some time in thinking over and discussing with others a few such topics. After a short season of such experience, he becomes inoculated. He has sensed—and will thereafter in his professional career not lose this sensing—the legislative possibilities of his law. He is groomed to take readily his

part—if Destiny has any for him—in the legislative activities of the near future. The main object of the course is accomplished. That object may be somewhat intangible now; but it is of profound consequence to the profession.

2. A secondary object is to familiarize the young man with the *sources* of research for legislative discussion of the existing law. The best of students are often naively unfamiliar with them. To illustrate: A member of the class once chose for his topic "The Abolition of the Death Penalty." He had found plenty of material; had marshaled the statutes; had summarized the statistics, etc. But at a prior consultation it appeared that in Kansas (let us say), where the penalty had been abolished and then restored, he had found nothing about the interim experience. It was suggested that he had better look into the governor's messages for that period; and this simple resource had never occurred to him.

The helplessness of the ordinary educated person in turning to seek for the sources of facts and arguments on a *legal* problem is greater than might be supposed. To initiate the embryo lawyer into an acquaintance with the extent and variety of reliable sources for this purpose is a real service to the profession.

3. Another secondary object is to reveal to the young lawyer the importance of skill in making a concise *informal* presentation of his cherished convictions to a group who must be persuaded. In many and many an emergency of a lawyer's career these two features—*brevity* and *informality*—are more vital than we commonly reflect. Whether it be a board of directors, a city council committee, a citizens' meeting, or a client's consultation—these conditions sternly limit the advocate full of his subject. He ought to have an illuminating experience before the reality is upon him.

In this course, the participants, who heckle the chairman, have an opportunity to observe how rare is the required talent, and how needful its cultivation. One of the features often gratefully spoken of is this experience of the difficulty of making all one's points effectively for a large subject in a limited time and subject to interruption.

4. Incidentally, no doubt, a benefit of the course is a rather broad scope of information on the actual problems of contemporary legislation. But if the course were conducted primarily with this view, it would easily degenerate into a "seminar," in which a "paper" is read by one, and the professor then criticizes, while the other members sit by in respectful and industrious silence. And this is *not* what the course is intended to be.

The Methods.—How, then, is the course conducted?

There are a good many details, as developed in the seven years' tradition. Perhaps

no one of them is essential. But they all fit together. The general spirit can best be told by saying that the class pretends that it is a legislative committee, and the chairman for the day is laying before them a proposal for their approval.

Of course, the idea of a legislative committee is not strictly carried out. There is no legislative machinery, not the least; the chairman is each member of the class in turn and the professor sits along with the rest like an ordinary member; there is no draft of a bill; and there is merely a straw vote at the end, to satisfy curiosity as to the persuasive effect of the chairman's presentation.

And now a little more in detail:

1. The class meets once a week, for a session of an hour and three-quarters. The meetings begin in the second term, or in December, or in October (if enough members have prepared, as chairmen, beforehand in summer time). The List of Topics having been posted long before, each member selects his own; and at an early preliminary meeting a schedule of dates is made up, by lot or by agreement.

2. Each member finds in the List of References enough material to give him an ample start in the sources. Industrious ones find more or less additional material. The sources are studied; the instructor is consulted as much or as little as desired, but only in regard to finding materials. Notes are prepared as fully as each one cares.

One week before each meeting, the chairman for that meeting distributes to each member a typewritten summary of his expected order of discourse. This summary *must* follow one rule only, viz., its details must be grouped under three heads:

I. What are the alleged abuses, shortcomings, defects, of the present law?

II. What are the remedies anywhere proposed?

III. What is the remedy favored by the chairman? Usually some brief history of the subject prefaces the first topic.

3. The member whose topic is scheduled for the day takes the chair. Other members, including the professor, sit around a long table. Entire informality prevails—just as in any committee meeting of friends.

The chairman may have full notes prepared, besides his summary, but he must not *read* anything—except an occasional quotation from an authority. His exposition is strictly oral.

He allots its topics so that he would take only thirty or forty minutes, if uninterrupted. But he has never gone far before a question is asked; then comes another, and others; and his forty minutes invariably expand to one hour and forty before he reaches his ending, and often he does not reach it. Perhaps a statement of law is doubted, perhaps a statement of fact. Perhaps an assertion now become elementary to him seems a mere as-

sumption to one of the others, and so he must digress to establish his fundamentals. In one way or another he finds that he must satisfy all sorts of expressed doubts before he can proceed safely to the next point. And the spirit of the occasion, emphatically, is that he is an advocate of some thesis, *proposing or opposing a change of law to those whose assent is required*, and hence he must seek to satisfy all doubts, and to carry his colleagues with him for his measures. Part of his benefit to be got is this experience of persuading other thinking members of the profession on a matter of legislation proposed by him.

The chairman is to control the objectors, and not let the due progress of his presentation be impeded. In this task he is not always as successful as he might be; but the professor can occasionally help him.

At the close, the chairman submits his proposal, in concise form. Usually, it embodies three or four essential features. If he feels that one or more, not essential, may endanger his measure, he may withdraw them. But the vote must be on the whole proposal, not on each part separately.

After each meeting, the chairman files with the professor a list of any references which he has found and used additionally to those on the printed list.

4. The membership is limited to sixteen; for there are sixteen weeks in a term, and one meeting a week; moreover, a larger number would not permit of informal committee spirit. If more than that number are to be allowed, two classes should be formed.

If the sixteen members are selected from a larger number of applicants, the choice can be made by priority, by lot, or by scholarship record.

The same professor attends all meetings. But it would be worth while for an additional one to attend; the various members of the faculty taking turns. But they should not choose meetings when a specialty of their own supplies the topic; the less they know on the special subject, the better members they are.

Such is the course in Problems of Contemporary Legislation. No doubt it could be conducted profitably on a plan differing in details from the above description.

—John H. Wigmore.

Note. Reference Lists on Problems of Contemporary Legislation have been prepared and are published in the October, 1914, number of the Northwestern University Bulletin, copies of which may be obtained on request from the Northwestern University Law School, Chicago, Ill.



Coming as a great shock not only to the University of Syracuse, but to law school men generally throughout the country as well, the death of Doctor James Byron Brooks, dean of the Syracuse University College of Law,

occurred at his home in Syracuse, N. Y., on the evening of June 17, 1914. Dean Brooks was 74 years of age and had been in ill health for some time.

Dean Brooks had played an active part in many civic affairs in addition to his duties as head of the Law College. He was born at Rockingham, Vt., June 27, 1839. He received his bachelor's degree at Dartmouth in 1869 and his master's degree from the same place in 1886. He was graduated from Albany Law School in 1871 and in the following year began the practice of law, being for many years the senior member of the firm of Brooks, Gere & Church. He had held professorships in the Law College long before being appointed its Dean.

Dean Brooks served as alderman in Syracuse in 1884 and 1885, was a school commissioner in 1886, 1887, and 1888, and after 1890 was a member and for a long time president of the Water Board. He was a veteran of the Civil War, serving finally as captain in the Fourth Vermont regular infantry. He was prominent in the work of the Methodist Episcopal Church and for many years had taught a large class of young men in the University Avenue Church. In September, 1873, he married Miss Carrie L. Jewell of East Orange, Vt., who survives him.

Mr. L. Carl Sargent, a practicing attorney in Syracuse, has been appointed acting dean of the University of Syracuse Law School.



A number of changes have recently been made as to the personnel of the faculty of the George Washington University Law School. Charles Noble Gregory has resigned from the deanship and is no longer connected with the law school. Everett Fraser, who for four years has been one of the resident professors in the school, has been elected dean to succeed Mr. Gregory.

To fill the vacancies in the faculty, caused by the resignations of Dean Gregory and Professor H. C. Jones (who is now the dean of the University of West Virginia Law School) and to increase the resident faculty, three new professors have been elected: Archibald King, J. Lewis Parks, Jr., and E. O. Schreiber, Jr. Mr. King is a graduate of the Harvard Law School and holds the degree of A. M. from Harvard College. For the past four years he has been a member of the law firm of King & King of Washington and prior to that time was associated with that firm for over four years. He will have charge of the classes in Torts, Bills and Notes, and Suretyship. Mr. J. Lewis Parks, Jr., leaves the practice of law in New York City to enter the law faculty. He is a graduate of Columbia University in both arts and law. The third new member of the faculty, Mr. E. O. Schreiber, Jr., is a graduate of George Washington University with the degrees of A. B. and

LL. B., both "with distinction." He has been since his graduation with the firm of Britton & Gray of Washington. Mr. Parks will teach Corporations, Mortgages, Public Service Companies, Municipal Corporations, and Domestic Relations, and Mr. Schreiber will have charge of topics of Contracts and Conflict of Laws.

The increase in the resident faculty has enabled the Law School to add several new topics to the curriculum and to increase the number of hours devoted to several others. During the coming academic year a total of one hundred hours per week will be given each semester.

This year is the semi-centennial year of the Law School, which was established in 1865. Plans are being developed for the celebration of this event next spring by a reunion of the alumni under the auspices of the Columbian-George Washington Law School Association. This association was organized two years ago in the interests of the Law School. It now numbers over four hundred and has recently published a directory of the graduates. A feature of the reunion will be a dinner of faculty, students, and alumni.

The Legal Aid Society of the Law School has been in operation during the summer, occupying an office in the school quarters. Since its organization last spring it has handled an encouraging number of cases and has been enthusiastically supported by the students who are members. It will be continued during the coming year.



At the meeting of the Board of Trustees of Cornell University, held in May, a leave of absence was granted to Dean Frank Irvine for the academic year 1914-15. Dean Irvine, as was announced in the last issue of the Review, is now a member of the Public Service Commission for the State of New York for the Second District. Edwin H. Woodruff has been appointed acting dean of the College for the coming academic year. C. T. Stagg has been promoted from an assistant professorship to be professor of Procedure, and has been appointed secretary of the Law College. A leave of absence has been granted to Wm. L. Drew for the coming college year. Charles Kellogg Burdick has been appointed professor of law. Mr. Burdick is the son of Professor Francis M. Burdick, one of the members of the original faculty of the Cornell Law School and now professor of law at Columbia University. De Witte B. Wyckoff has been appointed acting assistant professor of law for the year 1914-15. Mr. Wyckoff received the LL. B. degree from Cornell in 1910. For about a year and a half he practiced law in the office of Mr. Henry W. Jessup, of New York City. The remainder of the time since his graduation he has spent in legal writing and editorial

member of the faculty of the Harvard University Law School, is to deliver ten lectures on Modern Justice at Cornell. These lectures are given on the Goldwin Smith Foundation in the College of Arts and Sciences.



Dudley O. McGovney, who served last year as dean of the Tulane University Law School after the retirement of Judge Eugene D. Saunders, has resigned to become professor of law at the University of Missouri. Professor McGovney is succeeded as dean by Professor Charles Payne Fenner. Mr. Fenner is a graduate of the University of Virginia, both academic and law departments, and holds, also, the law degree of Tulane. He has been occupying a chair of civil law in the Tulane Law School, giving courses devoted to special topics in the civil law, which he will continue to give. Professor G. H. Robinson, who has been with Tulane University for the past two years, has been appointed secretary of the Law Faculty and will have charge of the routine and administrative work. Mr. Warren A. Seavey has been elected professor of law at Tulane to succeed Professor McGovney, and will give most of the latter's courses during the coming year. Mr. Seavey is a graduate of the Harvard Law School and has had rather extensive teaching experience. After practicing in Boston for a short while, he went out to China, where he taught five years as professor of law in the Imperial University, the law school of which he directed. Upon his return to this country, he taught for a year in the Harvard Law School. More recently he has been at the University of Oklahoma Law School, whence he went to Tulane. St. John Perret, a graduate of the Harvard Law School of 1913, will give a half course on Contractual Obligations at Civil Law at the Tulane School heretofore given by Professor McGovney. Mr. Charlton R. Beattie, a graduate of the University of Virginia Law School, and lately United States District Attorney at New Orleans, has been appointed a member of the Tulane faculty and will give the course on Louisiana Practice which has heretofore been given by Professor Fenner, and is now relinquished by the latter because of his added duties as dean. Professors Northrup, Robinson, Schwarz, Carroll, and Lemann will continue to give the courses which they have heretofore given at Tulane, as will also Messrs. Luzenberg and Grace and Judge Foster of the United States District Court at New Orleans.

The faculty of the Tulane University Law School at New Orleans have been much gratified by the showing made in the bar examinations in Texas by two of their recent grad-

uates. The faculty of the Harvard University Law School in preparing men for practice in common-law states. These men are the first graduates of the school since the reorganization of the school to complete the full common-law course for practice in Texas, and their showing indicates the thorough feasibility of the scheme of organization of the Tulane Law School, which provides two complete parallel courses, equipping students for practice either in Louisiana or in any common-law state. As a matter of fact, the peculiarities of the Louisiana law are confined chiefly to real estate law and the law of descent and distribution. In most other respects, the modern development of the law of Louisiana has been along common-law lines, and the provisions of the Louisiana Code introduce no more modifications than would be made in common-law states by their statutory provisions or codifications. Most of the courses offered by the school are, therefore, required of all students whether intending to practice within or without Louisiana.



The University of California School of Jurisprudence opened for the year 1914-15 on August 17th. The enrollment for the year in the professional school was one hundred seventy-eight, divided as follows: First year, ninety-four; Second year, fifty-two; Third year, thirty-two. There is a noticeable increase in the number of third year students who are candidates for degrees over the numbers in the classes of preceding years. There are twenty-seven candidates for the J. D. degree to be given in May, 1915. The law library fee of \$12.50 per term for each student registered in two or more professional courses was collected for the first time this year.

John Wurts of Yale, exchange professor for one year, arrived in Berkeley early in the summer after a transcontinental trip by automobile and has taken up the work of O. K. McMurray in the courses in Property and Conflict of Laws.

O. K. McMurray, who is on a year's leave of absence, went to Germany in May planning to carry on some investigation in the continental systems of law. When last heard from, in September, he was still in Berlin.

Barry Gilbert, recently of the Law School of Iowa State University, is giving the courses in Contracts, Equity, and Trusts.

George H. Boke, for many years a professor in University of California School of Jurisprudence, will teach this season in the Yale University Law School.

William Carey Jones, director of the School of Jurisprudence, has been preparing to publish a review of the history, development, and substantive rules of the school

There have been several changes in the law faculty of the West Virginia State University during the past summer. On July 1st Henry Craig Jones entered upon his duties as dean of the College of Law. Mr. Jones is a graduate of the Harvard Law School and was engaged in practice in Chicago for several years before taking up law teaching. For the past three years he has been a member of the law faculty of the George Washington University. With the numerous changes on the faculty particular satisfaction is felt in the ability to retain the services of James Russell Trotter, who for the past six years has given most satisfactory service as professor of law. Mr. Trotter holds the degrees of Bachelor of Arts and Master of Arts from Harvard University and received his law training at West Virginia University and the University of Wisconsin.

George F. Wells, who was acting dean during the past year, has resigned to accept the deanship of the Law School of the University of North Dakota. His place has been filled by the appointment of James W. Simonton of Chicago as assistant professor of law. Mr. Simonton graduated from the University of Indiana in 1903 and from the University of Chicago Law School with distinction in 1908. Since then he has been engaged in practice. In 1910 he gave with success the course on Mortgages in the University of Chicago Law School. David C. Howard has been appointed assistant professor of law to fill the vacancy caused by the absence on leave for one year of T. P. Hardman. Mr. Howard graduated from Carlton College in 1910 and received his master's degree and his law degree from Harvard University in 1911 and 1914, respectively. O. L. McCaskill, who for the past three years has been a lecturer in the University of Chicago Law School and has given a course in the John Marshall Law School, was appointed associate professor of law at the West Virginia University last February. He has given the highest satisfaction in his work the past semester and on September 1st was promoted to a full professorship. Mr. McCaskill received his arts and law degrees with distinction from the University of Chicago. For several years he was engaged in practice at the Chicago bar.

The law faculty of the West Virginia University now numbers five men who devote their entire time to the school and are ably assisted by the highly valued lectures of Judge Ira E. Robinson of the Supreme Court of Appeals. It is planned to add a sixth full-time instructor the coming year.

Many improvements have been made in the equipment of the school during the summer.

have been installed in the various class rooms, and separate offices for the various members of the faculty have been built adjoining the library.

The sad intelligence of the death of William H. Pease, for many years a member of the faculty of the University of Colorado Law School, was received late in August. Professor Pease left Boulder, Colo., early in August in company with Judge Fleming, dean of the Colorado Law School, and Professor Norlin, for a fishing trip upon the North Platte at Saratogo, Wyo. On the afternoon of the 20th of August he was drowned in some inexplicable manner while fishing upon that stream. Dr. Farrand, president of the University of Colorado, and Dean Fleming, who were fishing with Mr. Pease during the afternoon in question, missed Mr. Pease about 4 o'clock. Thinking he had gone back to the hotel, they returned thither about 7:30 p. m. and, not finding Mr. Pease, organized a search party for him. Mr. Pease's hat was discovered about 11 o'clock that night upon the eddy of a deep pool of the stream, and the next morning upon dragging the pool itself the body was found.

Mr. Pease was 42 years old and graduated from the University of Toronto in 1894, removing soon afterward to Colorado, where he studied law. He graduated from the University of Colorado Law School in 1898 and spent the next four years with the West Publishing Company in St. Paul. He became a member of the Colorado faculty in 1901.

Owing to the death of Mr. Pease, a number of changes have been made in the teaching force of the University of Colorado Law School. Frank Morehead, a graduate of this school of some years' standing, will take the subjects of Elementary Law and Contracts. F. G. Folsom, who teaches the subject of Bailments and Carriers in addition to being judge of the moot and practice court, will take the subject of Evidence. James H. Brewster, late of the faculty of the University of Michigan Law School, has taken the subjects of Equity Jurisdiction and Real Property.

Dr. William Draper Lewis has obtained a year's leave of absence from the University of Pennsylvania Law School. He is a candidate for Governor of Pennsylvania on the Bull Moose ticket. William E. Mikell, for many years a member of the University of Pennsylvania Law School Faculty, has been elected dean by the trustees. Mr. Lewis' courses will be given this year in the Law

School by Wm. A. Schnader, a former Gowen Fellow of the Law School. At the June meeting of the Board of Trustees the following was adopted:

"In the fall of 1915 and thereafter all applicants for admission to the school must have the degree of Bachelor of Arts or an equivalent degree from an approved University or College. Persons who, in the opinion of the faculty, are properly qualified may be admitted as 'hearers' in one or more subjects. Such hearers will not be considered students, nor will they be admitted to an examination, or be eligible for a degree."

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Dr. G. C. Butte, a former student of the University of Texas Law School, who spent some time in the practice in Oklahoma and has given the last three years to the study of legal subjects in Germany and Paris, has been appointed to the faculty of the University of Texas Law School. He will have the subjects of International Law, Public and Private, and Roman Law.

C. S. Potts, who for some years has been at the head of the School of Government in the University of Texas, is transferred to the Law Department as professor and assistant dean. He will give a course in Government, dealing in the fall term with our American institutions, in the winter term with the English, and in the spring term with some of the continental European governments (if there be any in vogue on the continent). He will also offer a research course in Statutory Law, dealing largely with the preparation and construction of bills, and their validity. Mr. Potts will also devote 60 hours to the consideration of Administrative Law.

Last year the University of Texas Law School extended the required amount of work to 15 hours per week, and after a year's experiment the faculty decided to continue the plan, so that the course now requires 1,350 hours of classroom work in law.

Last year the University of Texas Law School extended the time given to the study of the Use of Law Books from 10 hours to 30 hours. The large majority of the students in the Junior Class appreciated the work and were greatly benefited by it. In the University of Texas this work comes in the fall term of the first year and precedes the study of cases and it has been found very helpful later in the course when the case method is taken up. The students have a pretty definite idea of what a case is, what it stands for, and how to deal with it when they begin to work with them. The course is given by Mr. Cleaves, who became a member of the faculty last year. Mr. Cleaves also has charge of the courses on Damages and Domestic Relations.

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The forty-fourth session of the Law School, Georgetown University, opened on October 1, 1914. The faculty and students assembled

in the auditorium in the Law School Building where addresses were delivered by the president of the University, Reverend A. J. Donlon, S. J., and by the dean of the Law School, George E. Hamilton, LL. D. The formal address of the occasion was delivered by the Solicitor General of the United States, Hon. John W. Davis, of West Virginia. Indications point to a large enrollment of students for the coming year, and it is believed that the registration of the past two years, when the student body numbered over one thousand men, will at least be equaled.

George E. Hamilton, LL. D., for many years a member of the faculty of Georgetown University Law School, has been elected dean of the school, the position being left vacant by the death of Hon. Harry M. Claiborn, formerly Chief Justice of the Supreme Court of the District of Columbia. No member of the faculty has been more closely associated with the Law School and the University than Mr. Hamilton. He received the degree of Bachelor of Arts from Georgetown in 1872, Bachelor of Laws in 1874, Master of Arts in 1882, and Doctor of Laws in 1889. In 1886 he was appointed to the law faculty of the University and has remained a member ever since. From 1900 to 1903 Mr. Hamilton was dean of the Law School, and by his return to his former position, the school is assured of continued success.

The Law School faculty has been strengthened by the addition of Honorable J. Harry Covington, as professor of Common Law Pleading. Mr. Covington was recently appointed Chief Justice of the Supreme Court of the District of Columbia, the position left vacant by the death of Hon. Harry M. Claiborn; Mr. Covington will also conduct the same course in the Law School as the former Chief Justice. Justice Covington is a graduate of the law department of the University of Pennsylvania, and has practiced law in Maryland since 1894. He was elected to Congress in 1909, and was serving his second term at the time of his appointment.

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The New York University Law School opened September 28, 1914. No change has been made in the curriculum, which, after a careful trial, has been found to give satisfaction. It covers twelve hours per week for thirty-two weeks, and is a complete three-year course. The curriculum committee—in establishing this course—gave particular attention to co-ordination and the succession of subjects. In determining its length of time to be devoted to each subject, they made a careful comparison of its time devoted to each subject, by six of the best schools in the country, using the same method of instruction and with co-ordination in mind, have fixed upon what they be-

lieve to be a proper length of time for the subject. As an illustration of this, four hours per week for one year are devoted to Contracts—three hours to Sure Contracts and one hour to Quasi Contracts, in the first year Quasi Contracts following Contracts. Sales and Agency are built largely upon the Contract course and to each of them is devoted one hour per week in the second year.

Charles Frankham, who has been teaching in the New York University Law School during the past year as an instructor on part time, has retired to engage in active practice in New York City.

Gerald Chapin, who is on the regular staff of Fordham University Law School and who was with the New York University Law School this past year, has resigned. Mr. Chapin's work at Fordham, together with his manifold literary connections, demands his full time. The severing of his connection with the school is regretted by the student body and the faculty.

Arthur I. Vanderbilt, a member of the New Jersey bar, has been appointed lecturer in the New York University Law School.



The College of Law of the University of Florida, which is now five years old, has forged ahead rapidly. The enrollment for 1912-13 was 55, while that for 1913-14 was 77—an increase of more than 45 per cent. Moreover, owing to the additional year of high school work required for matriculation, the quality of the students last year was considerably better than in 1912-13. The requirements for matriculation this fall have been increased to four years of high school work, and it is expected that within a year or so the term will be increased to three years. The aim of the college is to acquire quality rather than numbers.

The new law building, which is approaching completion, is a fine brick and stone structure. Its style of architecture, in harmony with the other imposing buildings of the University, is Tudor-Gothic. It is 172 feet long, 70 feet wide, and 2½ stories high. The first floor comprises the dean's offices and commodious lecture room and a large and well-lighted library with consultation rooms adjoining; also, cloak and toilet rooms and broad halls. The second floor has two large lecture rooms with private offices adjoining for the professors, and a very elegant and commodious moot courtroom finished in panel work and fully equipped. Adjoining the moot courtroom are the judge's office, clerk's office, and jury room. The third floor comprises attractive quarters for use of the John Marshall Debating Society. The building is heated by steam, lighted by electricity and equipped throughout with a superior grade of furniture. The membership of the law faculty for 1914-15 will remain the same as last year.

There have been some important changes in the law faculty at Stanford University this year. Judge Emlin McClain resigned in order to return to the University of Iowa, where he has since been appointed dean of the Law School of that institution. W. N. Hohfeld has been granted a leave of absence for one year. Mr. Hohfeld will teach this year at the Yale University Law School. The work of these two men will be given this year by John B. Cheadle and Hector G. Spaulding. Professor Cheadle, who is a member of the law faculty of the University of Oklahoma, will give the courses in Evidence, Criminal Law, and Persons. Mr. Spaulding, who holds the degree of B. S. from the University of Minnesota and that of LL. B. from Harvard, will give Equity I, Trusts, Bankruptcy, and Suretyship. Registration in the law school at Stanford University shows a substantial growth. One hundred and sixty-five law students are enrolled this year as against one hundred and forty last year, while in the pre-legal curriculum there are one hundred and eighty-seven as against one hundred and sixty-four. It is noticeable that this growth is in the face of the recent increase of tuition from fifty to one hundred dollars per year.



The most notable event in connection with the Albany Law School during the past year was the address on Legal Ethics by former President Taft on May 21, 1914. The Commission of Education placed the audience room of the new Education Building at the disposal of the school, and the lecture was attended by a number of the judges of higher courts and members of the bar, as well as by the student body and citizens. General Thomas H. Hubbard, the founder of the course on Legal Ethics, presided and introduced President Taft. Brief addresses were also made by Governor Martin H. Glynn and Honorable John H. Finley, Commissioner of Education. This course was inaugurated some ten years ago by the endowment of the chair of Legal Ethics by General Hubbard by which provision was made for three lectures in each year to be given by eminent lawyers and judges. The lecture by Mr. Taft was the twenty-seventh. Arrangements are being made for the continuance of the course by lectures from members of the bar and lecturers in law schools who are interested.

No changes have been made in the faculty of the Albany Law School for the present year, although at this writing F. W. Battershall, lecturer on Persons and Property, has not been heard from since the commencement of the war, at which time he was located in Hamburg.

The three-year course, the first class under which graduated in May last, has proved a decided success in every respect, the school having increased in numbers, and the additional year having added very much to the efficiency of its work.

The opening of the school year brought about a number of changes in the faculty of the School of Law of the University of North Dakota. Joseph L. Lewinsohn resigned during the past year, his resignation taking effect last June. Mr. Lewinsohn has entered the practice again, locating in Los Angeles, Cal. Charles E. Carpenter, who has been a member of the faculty for five or six years, severed his connection with the law school last June and has accepted a position on the faculty of the Law School in the University of Illinois. Dr. Robert L. Henry who has been dean of the school for the past two years, resigned during the summer and has been appointed to a professorship in the University of Iowa Law School. The vacancies thus created have been filled as follows: L. E. Birdzell, who has been absent on leave as chairman of the State Tax Commission, returns to take up his work in the school. Dr. Lauriz Vold takes Professor Carpenter's place on the faculty, and George F. Wells has been elected as dean of the school. Dean Wells has for the past two years been a member of the faculty of the Law School of the University of West Virginia. He is a graduate of Oberlin College and of the University of Michigan Law School of the class of 1895. After graduation he practiced law in Toledo, Ohio, until 1912, when he went to the University of West Virginia. While in Toledo, Professor Wells organized and directed the work of the night law school connected with St. John's College. Dr. Vold secured his preliminary education at the High School in St. Paul, Minn. He entered Harvard College in 1906, graduating in Arts in 1910. He then entered the law school, getting his LL. B. degree in 1913, and took post graduate work for the special purpose of fitting himself for teaching. He was given the degree of Doctor of the Science of Jurisprudence in 1914. The remaining members of the faculty are Professor Roger W. Cooley, now beginning his fourth year with the school, and Mr. H. A. Bronson, who has been lecturer on Real Property for many years.



The Washington College of Law of Washington, D. C., closed in May a most successful year with the largest registration and the largest graduating classes in the history of the school. Ten women were successful candidates for the degree of Master of Laws, and nineteen men and thirteen women for the degree of Bachelor of Laws. The school was organized as the Woman's Law Class in 1896 with three students. Mrs. Ellen Spencer Mussey, who had served continuously as dean, was obliged to give up her active duties as head of the college on account of ill health in the summer of 1913 and was made honorary dean.

Miss Emma M. Gillett who has been asso-

ciated with the school from its beginning, was appointed dean in August of that year. Thus the custom of a woman dean has been continued. Miss Gillett was admitted to the bar of the Supreme Court of the District of Columbia in 1883 and to the United States Supreme Court in 1890. She has been in active office practice from the time of her admission to the bar. In 1892 she formed a legal partnership with Mr. Watson J. Newton, which continued until his death in 1913, the firm being known as Newton & Gillett. In 1896 she and Mrs. E. S. Mussey organized the Woman's Law Class, which developed into the Washington College of Law. Miss Gillett was the first woman to be appointed a notary public by the President of the United States, receiving her first appointment in 1881. She has been appointed continually since. She is a member of the Board of Directors of the Appraisal & Title Company of Washington, D. C., and is a graduate of Lake Erie College, Painesville, Ohio.



At Creighton University, Omaha, Neb., instruction in the fourth or senior year of the law course is given this year for the first time since instruction at night was first offered in 1909. Only two classes a year are organized for night work, the emphasis being on the day classes.

Neal D. Reardon, who came to the school from Chicago last year, will again be on the staff, and in addition to his regular instruction will take charge of the 'Varsity debating. New courses will be offered in Argumentation, Public Speaking, and Parliamentary Procedure. The entrance requirements to the Creighton University Law School this year were raised to thirty high school credits without conditions, no student being hereafter admitted as a candidate for the degree unless he complies with this requirement. Louis J. Te Poel will offer instruction in Private Corporations during the absence of Professor Raymond G. Young, who is doing research work for an advanced degree at an Eastern University.



Several changes have recently taken place in the faculty of the Law School of Washington and Lee University. Dean Martin P. Burks has been appointed by Governor Stuart one of a commission of three authorized by the state Legislature to revise the Code of Virginia, and the University has granted him a release for two years from active duties as a member of the faculty while engaged in the work of Code revision. He retains, however, the office of dean of the Law School. Mr. Robert W. Withers, who for two sessions has been a member of the law faculty, has resigned to re-enter ac-

tive practice. He will locate in Tampa, Fla. Mr. Clovis Moomaw, who for most of last session has supplied the place made vacant by the death of Professor Abram P. Staples on September 30, 1913, has been elected professor of law. He will teach the subjects of Contracts, Real Property, Corporations, Bankruptcy, and Negotiable Instruments. Mr. Moomaw holds the degree of M. A. from the University of Virginia, and graduated in law at Washington and Lee in 1912. Mr. Holden B. Schermerhorn has been elected professor of Torts, Carriers, Insurance, and International Law. Mr. Schermerhorn graduated from the University of Pennsylvania with the degrees of Ph. B. in 1890 and LL. B. in 1893. For ten years he was a member of the Philadelphia bar, during six of which he was a member also of the law faculty of Temple University. He has recently spent some months of study and recreation in Europe, and last winter published a volume on the "Essentials to Principal Actions in Tort at Common Law." Mr. William H. Moreland of the firm of Baird, Swink & Moreland, of Norfolk, Va., has also been added to the law faculty, and during the absence of Professor Burks will teach his subjects, Pleading and Practice, Evidence, and Criminal Law. Mr. Moreland graduated at Washington and Lee with the degree of LL. B. in 1905, and since that time has practiced successfully in Norfolk.



The Denver Law School has added to its curriculum for the coming year a course in Bankruptcy, to be taught by W. W. Grant, Jr., of Denver, a graduate of the Law School of the University of Virginia and a practitioner of considerable experience in bankruptcy matters. A course in practice has also been established, of seventy hours, under the direction of George E. Tralles of the Law School faculty. This course, in addition to the regular practice work with moot cases based on assigned statements of fact, will include personal inspection and report on all the courts, state and federal, held in Denver. Another change in the curriculum is that the course in American Constitutional and Political History, given at the Law School by Professor David Shaw Duncan of the Liberal Arts Department of the University of Denver, has been thrown open to all the students of the Law School, without additional charge; and it is expected that a large number of the students will avail themselves of the opportunity of taking this very interesting and important course.

The Colorado State Bar Examination, held in Denver in July, added another credit mark to the record of the Denver Law School, its graduates taking five out of the first seven places as the result of this examination, first place going to Kemp D. Battle of the class of 1914, Denver Law School. The graduates

of this school have taken first place in thirteen out of the seventeen June examinations held by the State Board of Law Examiners of Colorado, this board having been created in 1897. It is not connected with any of the law schools, but is an impartial board of practicing lawyers appointed by the Supreme Court of Colorado.

As evidence of the activity of young lawyers and law school graduates in politics, it is noted that four graduates of the Denver Law School are candidates for important positions in the approaching Colorado elections. J. Fred Farrar of the class of 1901, present Attorney General of Colorado, is a candidate for re-election to the position which he now holds. Ben Griffith, of the class of 1904, Ex Attorney-General of Colorado, is a candidate for United States Senator on the Progressive ticket. On the same ticket, A. A. Lee of the class of 1905 is running for Congress from the Denver district, and E. J. Boughton of the class of 1899 is also running for Congress on the Republican ticket from the Third district.



Two changes have recently taken place in the faculty of the University of Wisconsin Law School. Ernest G. Lorenzen resigned to go to the University of Minnesota, and W. M. Moore to the University of Chicago Law School. The places have been supplied by electing Oliver S. Rundell, graduate of the University of Wisconsin Law School in 1910, and for two years an instructor, for the position of assistant professor of law, and the electing of Harold D. Wilkie, graduate of this Law School in 1912, for the position of instructor in law. E. A. Gilmore, who has been absent on leave of absence for the past year, has returned and will take up his duties in the law school at the opening of the coming semester.



The University of Detroit is planning the erection of a large unit to its present buildings. The new building will be four stories, 100 by 200 feet. The Law Department of the University, besides having a library and offices for the dean and secretary, will occupy an entire floor in the new building for classroom purposes.

The Law School of the University of Detroit sent out its first class of graduates last June. A notable increase to the law library this summer has been the Records and Briefs of the Michigan Supreme Court from the year 1906 up to the present time. The law faculty for the year 1914-15 will remain substantially the same as the year 1913-14.



Hon. James Lawrence, of Cleveland, serving his second term on the common pleas bench of Cuyahoga county, died suddenly on

January 15, 1881, at Washington, Ohio, the son of Congressman William Lawrence. He graduated at Kenyon College in 1871 and three years later was admitted to the bar. He served as director of law of Cleveland and Attorney General of Ohio. From 1898 to 1910 Judge Lawrence was professor of law at Western Reserve University, teaching until 1904 the Law of Public and Private Corporations; from 1904 to 1910 he was professor of Constitutional Law. He was a member of the Ohio State and Cleveland bar associations, serving as president of the latter in 1909 and 1910. A few hours before his death Governor Cox of Ohio had appointed him as a member of a commission to prepare a plan for simplifying judicial procedure.

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Clarke B. Whittier, who has been a member of the University of Chicago law faculty since 1902, has resigned after having been on leave of absence for the past two years. The vacancy has been filled by the appointment of William Underhill Moore of the University of Wisconsin Law School. Professor Moore, a graduate of Columbia University, took his LL. B. from the same institution in 1902, and, after a few years' practice in New York City, became a member of the law faculty at the University of Kansas in 1906. In 1908 he went to Wisconsin. For several years he has taught in the summer session of the Columbia Law School, and this summer he was similarly engaged at the University of Chicago. Professor Moore will teach Bills and Notes, Municipal Corporations, Surteyship and Mortgage, and the first half of Contracts. Hereafter all of the courses in Pleading, Practice, and Evidence at Chicago will be in charge of Edward W. Hinton.

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Archibald H. Throckmorton, for several years professor of law in the Indiana University Law School, has accepted a professorship in the Law School of Western Reserve University at Cleveland, Ohio.

Last year, for the first time, all three classes in the Law School of Western Reserve University were composed entirely of graduate students. The change from a law school admitting men directly from high school to a graduate basis was effected with a net loss of but twenty-seven students and every one connected with the Law School is satisfied that the change was a wise one.

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The University of Maine College of Law has been again the donee of a most valuable gift. A check was received from Hon. D. D. Stewart of St. Albans, Me., for \$13,750 to pay

cost originally, with the grounds attached thereto, something like \$125,000. The fact that the board of trustees, through two magnificent gifts from Hon. D. D. Stewart, is able to present this Law School Building to the people of the state, is a matter of sincere congratulation to all of the citizens of Maine. Hon. William T. Haines, now Governor of the state, then president of the board of trustees of the University, together with his fellow trustees and collaborators for the cause of legal education, deserve great credit for taking advantage of the opportunity of securing this fine edifice for the Law School and for the people of the state and their children.

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Three changes have taken place in the faculty of the University of Iowa Law School this season. Henry W. Dunn, who has been the dean of the Law School for the last two years, resigned to re-enter practice in Boston. Hon. Emlin McClain returns to Iowa to take up the deanship which he had formerly held for about twenty years, prior to his going upon the Supreme Court Bench of Iowa. Since retiring from the Bench, Judge McClain has been teaching in the Leland Stanford University Law School. Judge McClain is so well known to the law school world it is unnecessary to enumerate here his many achievements and good works. The whole state of Iowa is proud of the judge and is much pleased that he is returned to take charge of its University Law School.

Robert L. Henry, who for the past two years has been the dean of the University of North Dakota Law School, has resigned to accept a professorship in the University of Iowa Law School. Mr. Henry has taken the place of Barry Gilbert, who is now teaching at Stanford University.

The third change in the faculty of the Iowa University Law School is the resignation of Oscar R. Ewing, who has entered the practice of law at Indianapolis. His place is taken by H. F. Goodrich, a recent graduate of the Harvard Law School.

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Several changes occurred in the faculty of the University of Missouri Law School during the past summer. Charles K. Burdick resigned to accept an appointment as professor of law at Cornell University. Assistant Professor Grover C. Hosford resigned to engage in practice in St. Louis. Eldon R. James, of the University of Minnesota, was appointed dean of the school. Mr. James was for a number of years at the University of Cincinnati. He was one year at the University of Wisconsin and one year at the

law. Mr. McGovney has taught at Indiana, Illinois, and Tulane Universities. During the past summer he taught at the University of Michigan. George L. Clark and J. P. McBaine of the University of Missouri faculty gave instruction during the summer in the Law School of Columbia University.



The twenty-first year of the Indiana Law School, University of Indianapolis, opened September 23d with an enlarged enrollment over that of last year. The corps of instructors in this school numbers fifteen, all of whom are engaged in the actual practice of law, the last three additions to the faculty being: Edward M. White, a graduate of the University of Michigan Law School, class of 1883, who was in the actual practice of the law at Muncie, Indiana, until his appointment as Assistant Attorney General of Indiana, which office he held four years. He is now practicing in Indianapolis, and has been elected professor of law after two years' service as an instructor. Howard W. Adams, who received his Bachelor of Arts degree at the University of Indiana, and his Bachelor of Laws at the Indiana Law School and the Yale Law School, and subsequently traveled extensively in Europe investigating continental methods of teaching law, has been elected instructor in Domestic Relations. And Harry C. Hendrickson, a graduate of the Indiana Law School, class of 1901, and formerly Assistant to the Federal Commission to Codify the Laws of the United States, has been appointed instructor in Moot Court Practice.



H. Gerald Chapin, who was last year professor at Fordham Law School and an associate professor at New York University Law School, has severed his connection with New York University Law School and will be with the faculty of New Jersey Law School the coming year. He will give the courses in Evidence, Conflicts of Law, and Constitutional Law. He will continue his associations with Fordham Law School. Dr. Calvin McClelland, a former member of the council of New York University and now a practicing attorney in New York, will give the course in Municipal Corporations and Personal Property in the New Jersey Law School the coming year. Clyde D. Souter, a graduate of Dartmouth College and New Jersey Law School, has been added to the faculty of the New Jersey Law School and will give the course in Real Property this year. The first number of the New Jersey Law Review will be issued during the coming year. While this magazine will follow in general the same lines as other Law School Reviews, it will

some problem of interest to the New Jersey practitioner.



The College of Law, University of Southern California, Los Angeles, has made no changes in its faculty for the year 1914-15. Minor changes have been made in the course of study consisting mostly of consolidating small subjects in a group and placing all under single instructors. Dean Frank M. Porter thinks he has found a solution to the problem heretofore troubling night students—that is, the difficulty of keeping the night work up to the same grade as the day work. This has been accomplished by taking certain subjects out of the regular night work and putting them into a third term, or summer session, taught in July and August. In other words, the night course now consists of three years of eleven months and one year of nine months. The school has steadily added to its library until it has over 8,000 volumes, all late editions and live books. The enrollment in the College of Law this season will probably number 700 students.



Hon. Gavin W. Craig, former Secretary and at present instructor in the University of Southern California Law School is a candidate for Presiding Justice of the Court of Appeals, Second District of California. At the primaries in August, Judge Craig led all other candidates by some thousands of votes. Judge Craig's long experience in law school teaching, together with a recognized learning in the law, makes him especially well equipped for the position of Justice of a court of last resort. Judge Craig's many friends and admirers throughout the law schools of the country will be gratified to learn that the indications are very favorable for his election in November.



The School of Law of the University of Alabama opened September 9th, with a large attendance in both years of the course. All things are promising for the most successful year in the history of the law school. James E. Morrisette, one of the leading young attorneys of Tuscaloosa, has been added to the law faculty, taking the place made vacant by the resignation of the Hon. A. S. Van De Graaff. The other members of the faculty are the same as last year. Mr. Morrisette has charge of the subjects of Real Property, Evidence, and the Code of Alabama.

During the latter part of the last scholastic year, the law library was enriched by the gift of Judge James J. Garrett, of Birmingham, Ala., of his private library, consisting

of over 1,600 volumes. This gift, which will enable the law school to do more effective work than ever before, is truly appreciated by the student body, the law faculty, and the officials of the University of Alabama.



Hon. Hooper Alexander, professor of Constitutional Law and Corporations in the Atlanta Law School, was during the last school year appointed United States District Attorney for the Northern District of Georgia. He will continue his work in the school as lecturer on Constitutional Law and Corporations. Hon. Thomas Ewing, lecturer on Patents and Copyrights in the Atlanta Law School, was appointed by the President as United States Commissioner of Patents. He will continue his lecture work with the Law School.

Hon. E. Marvin Underwood, professor of Evidence in the Atlanta Law School, has been appointed Assistant United States Attorney General. Henson W. Jones, a graduate of the University of the South, has been elected professor of Elementary Law and Bills and Notes in the Atlanta Law School. R. B. Troutman, a graduate of the University of Georgia and of the Columbia University Law School, at which last school he held the position of editor of the Law Review, will conduct the quiz work on Constitutional Law. M. H. Wilensky, a graduate of the Atlanta Law School and of the Columbia University Law School, will conduct the quiz work on Corporations.



Hon. Carroll T. Bond will no longer teach Pleading in the University of Maryland Law School, but will continue to lecture on Bills and Notes. The course on Pleading will be conducted by Judge James P. Gorter, who also will lecture on Evidence. William L. Rawls has resigned his associate lectureship on Contracts, but will continue to lecture on Corporations. The course on Contracts will be conducted by Edwin T. Dickerson, who is also the secretary of the Law School.

The Practice Court, composed of a Chief Judge, three Associate Judges, and a Clerk of Court, all of whom are practicing attorneys, will be under the guidance of Ridgley Sappington, Esq., as Chief Judge. The Associate Judges are Messrs. Forrest Bramble, Samuel Want and Edwin T. Dickerson. Benjamin W. Powell will continue as Clerk of the Court.

Through the efforts of Ellis Levin, a graduate of the class of 1914, a statute has been enacted by the Legislature of Maryland of this year enabling graduates of the Law School who are under twenty-one years of age to take the bar examination, though they may not qualify to practice until the age of majority is attained.

The faculty of the University of Notre Dame Law School will remain practically unchanged for the ensuing year. Col. William Hoynes as dean of the school will continue to have general supervision of the work both of the graduate and undergraduate courses, though of course much of his time is given to the legal business of the University. At the University of Notre Dame it has been observed in recent years that an increasingly large number of students enter the law course with a view rather to the acquisition of legal knowledge for business purposes than to be admitted to the bar and engage in practice. Some students, too, specialize in certain branches of the law in connection with the other courses.



The Kansas City School of Law has added to its faculty, as assistant instructor, Mr. John T. Culbertson, Jr., of Delavan, Ill. He has located recently in Kansas City and is associated in the practice with E. D. Ellison and Ben E. Todd, 718 Commerce Building. Mr. Culbertson received his LL.B. at Illinois Wesleyan University, Bloomington, Ill., and is a member of both the Illinois and Missouri bars. Mr. John G. Hutton of the Kansas City bar has also been added to the faculty of the Kansas City School of Law as assistant instructor. He is a graduate of the Kansas City School of Law and has had a year's graduate work at Washington and Lee University, Lexington, Va.

Twenty-five hundred additional volumes have been placed in the Bar Library Association at Kansas City, Mo., bringing the total of their library up to 12,500. The privileges of this library are granted to the students of the Kansas City School of Law.



Two new members have been added to the faculty of the Valparaiso University Law School this year. Lenn J. Oare will teach Trusts, Mortgages, and Criminal Law. Mr. Oare took his B. S. in 1905, A. B. in 1908, LL. B. in 1908, all at Valparaiso; and LL. M. at Yale in 1911. He is actively in the practice of law at South Bend, Ind. Walter L. Summers will have the subjects General Jurisprudence and Domestic Relations. Mr. Summers holds the degrees A. B. and LL. B. from Indiana University and Jur. Dr. from Yale. He is in the practice at Gary, Ind. Each of these men took all the honors in their respective schools for which he was eligible to compete, and is successful in the practice.



The following news items in reference to the Detroit College of Law are of interest:

Henry C. Walters, a prominent Detroit Insurance lawyer, replaces Lorne W. Weber in teaching Insurance.

A lecture course in Medical Jurisprudence has been added to the curriculum, which will be taught by Allan H. Frazer, the present prosecuting attorney for Detroit.

A course of lectures on Workingmen's Compensation Law has been added, which will be delivered by Hal. H. Smith, prominent member of the Detroit bar.

William A. Krichbaum will conduct the case-study work in Equity Jurisprudence and Contracts.

School is now giving a minimum of 10 hours work per week.

Enrollment for past year was 284 students.



The Southwestern University Law School at Los Angeles, which was organized in the fall of 1913, announces its faculty for this year as follows: Hugh Evander Willis, A. M., LL. M. (Minnesota), dean and professor of law; Benjamin Franklin Woodard, A. B., LL. B. (Harvard), instructor of law; Charles Edwin Hobart, A. B., LL. B. (Columbia), instructor of law; Arthur J. Abbott, A. B., J. D. (Michigan), professorial lecturer on Code Pleading; Leslie R. Hewitt, A. B. (California), Judge Superior Court, professorial lecturer on Practice; Ernest U. Schroeter, LL. B. (Northwestern), professorial lecturer on Evidence; Walter K. Tuller, A. B., LL. B. (California), professorial lecturer on Practice; Nathaniel P. Conrey, A. M., LL. B., Presiding Justice District Court of Appeals, special lecturer on Law of Waters; Isidore B. Dockweller, A. M., special lecturer on Organization of Corporations; Edward J. Fleming, special lecturer on Extradition; I. N. Huntsberger, A. M., LL. B., special lecturer on Admiralty; William M. Van Dyke, A. B., LL. B., Clerk United States District Court and Commissioner, special lecturer on Federal Procedure; Frank R. Willis, LL. B., Judge Superior Court, special lecturer on Criminal Procedure.



The College of Law of State University of Kentucky has added a four-year course, which will require, in addition to the three years of law work, one year of selected work in the College of Arts and Science. The three-year standard course leading to the degree of LL. B., will continue to be maintained. It is the intention of the college authorities at an early date to offer only the four-year course. There will be no change in the University of the regular faculty this season, but two additional resident lecturers are added.



Bruce Wyman wishes to announce that his whole time will now be available for the various phases of consulting practice in which he

has been engaged of late years, such as conferences, opinions, briefs and arguments relating to business agreements, commercial securities, corporate combinations and public utilities.

With the taking effect on September 1st, 1914 of his resignation from his professorship in the Harvard Law School, he is now in a position to engage in the general practice of the law, and to conduct, without conflicting engagements as to times and places, proceedings before commissions and courts.

Mr. Wyman's address is 50 Congress Street, Boston, Mass.



In the Law Department of the University of Virginia no changes are to be noted in the professorial force, but in the ranks of assistant instructors the following substitutions have been made: In the places of Messrs. F. M. Diven, P. H. Bailey, and L. R. Slaven, all of whom have retired in order to practice their profession, are found Messrs. H. L. Church, A. F. Triplett, J. M. Hurt, and E. N. Moore.



Warren H. Pillsbury, who was an instructor in the University of Illinois Law School during the second semester of last year, has resigned for the purpose of entering the practice of law. His place in the University of Illinois Law School is taken by Charles E. Carpenter, formerly of the University of North Dakota. Mr. Carpenter is to rank as assistant professor and is to handle the Property courses principally.

Last spring the trustees of the University of Illinois approved the plan to increase the entrance requirements to the law school from one to two years of college work, beginning with the fall of 1915-16.



Because of the heavy strain imposed upon the small diplomatic staff of the state department by the European war, Secretary Bryan has retained two experts to serve as special counsel as long as the emergency exists. They are Eugene Wambaugh, professor of International Law in Harvard University, and James Brown Scott, secretary for the Carnegie Endowment for International Peace, and formerly solicitor for the state department.



Hon. Henry Wade Rogers, who was appointed Judge of the United States Circuit Court last winter, will continue to serve as dean of the Yale University Law School for the year 1914-15.

Lyman P. Wilson has resigned from the University of Idaho Law School to accept a position on the faculty of the University of Oklahoma College of Law. Earl C. Arnold has been appointed to succeed Mr. Wilson at the University of Idaho. Mr. Arnold is a graduate of Baker University and received his LL. B. degree at Northwestern University.

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Dean Marshall McKusick, J. E. Payne, and Harry W. Vanneman will have charge of the teaching work at the University of South Dakota Law School this year. J. E. Brumbaugh has a year's leave of absence and will practice in Eugene, Or. His position will be temporarily filled by Mr. E. V. Mitchell, who is a graduate of Boston University Law School and who has been practicing in Boston, Mass.

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The Suffolk Law School has purchased the estate at 45 Mt. Vernon Street, Boston, Mass., and the school is now occupying the premises as its home. The property consists of a lot having a frontage of 25 feet and an area of 2,700 square feet. There is a four and a half story, brownstone-front house. There is a total valuation of \$28,000.

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The University of Montana Law School, at Missoula, Mont., is now in new quarters and occupies one entire floor of the University Library building. Many additions have been made to the law library and it now contains about 6,000 volumes. Prospects for an enrollment of over a hundred students this year are very good. Following is a list of the members of the faculty: Albert Newton Whitlock, Acting Dean; Charles Melvin Neff; Leslie James Ayer; Charles William Leaphart; Stephen I. Langmaid; John B. Clayberg; Hon. F. C. Webster; G. L. F. Kellogg.

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The John Marshall Law School of Chicago, Ill., has published a booklet containing its recent examination papers for free distribution to those who may apply for copies.

Lewis A. Stebbins resigned from the faculty of the John Marshall Law School to become the dean of the Webster College of Law in Chicago.

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The Richmond College Law School will occupy new quarters at Westhampton (just outside of the city limits of Richmond, Va.) this season. Progressive changes, such as a new Law School building, a larger faculty, and library, are being planned.

John Louis Baker, A. B. of Miami University and LL. B. of Indiana University, has accepted the chair in Indiana University School of Law made vacant by the resignation of A. H. Throckmorton, who is now teaching in the Western Reserve University Law School.

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The Minnesota College of Law, a night law school, has been recently organized in Minneapolis. Mr. Elmer C. Patterson is the dean.

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From the Law Students' Journal (London, Eng.), September number: "This number is issued under circumstances which are unprecedented to all its readers. Our country is actively engaged in a big European war, and all of us are feeling its effect in the interruption to our daily avocations, the curtailment, or loss, or jeopardy of our business and income, and the irksome restrictions imposed on us by military necessities. We are oppressed by anxiety for those near and dear to us, whose lives are in peril, and for the future of our country. Personal differences that would at other times have seemed of great importance have vanished before that peril which threatens our national existence, and each of us is determined to do his best in whatever way he can in the long and bitter struggle that lies before us. We realize that our country has been reluctantly forced into war on behalf of a righteous cause, by legal and moral obligations that left us no option, and we believe that in the long run that righteous cause will triumph.

"The number of bar students and article clerks, and barristers and solicitors as well, who have for a time left their studies and their practices for military duty must be very large. The Law Society has abandoned its annual provincial meeting."

♦ ♦ ♦

Chief Justice Isaac Franklin Russell, of the Court of Special Sessions, New York City, in an address on the subject "Difficulties in the Way of Proof," before the Brooklyn Law School, said in part:

"Among the many difficulties in the way of proof, it will be instructive to note some which arise from the moral obliquity of the witness, prompting him to lie; from honest errors in perception, the result of the infirmity of his faculties; from the insufficiency of speech as a vehicle of truth, and from the tendencies of bias, patriotic and religious, deflecting a sincere and able man from the right line of correct testimony.

"Direct testimony, that which bears immediately upon the fact to be proved, showing it to be within the personal knowledge of the person testifying, is subject to the objection that men may deliberately lie. For example, one accused of murder, in the failure of all other possible defenses and in sheer desperation, re-

market under the economic law of supply and demand; much of expert testimony is, therefore, inconclusive.

"One of the last public acts of President Arthur was to pardon a prisoner who had been convicted of counterfeiting; the identical coin which experts had pronounced false was proved to have been issued from the public mint.

"A jeweler in New York, of great reputation, was accused of having substituted in a ring given to him for repairs a cheap and vulgar stone for a precious gem; experts examined the stone and pronounced it false; but the judge required its removal from the setting in open court, whereupon, on re-examination, all the experts concurred in testifying to its genuineness and against the possibility of fraudulent substitution.

"Cross-examination often serves to bring out truth from dark corners. Cross-examination is an art in which few are proficient. A bungling advocate may by cross-examination simply allow a witness to emphasize his direct testimony by repeating it. Color-blindness in the witness, his illiteracy, his inability to tell the time by the courtroom clock and his incapacity to estimate size, weight and distance may all be revealed by his skillful cross-examiner. A forger may be detected, as in the case of the Farnell letters printed in the London Times, by requiring the witness to write instantly in the presence of the jury five or six words, all misspelled and with characteristic chirographic peculiarities, both in the forged writing and in the written answer to counsel."

◆ ◆ ◆

Once when Chief Justice Waite, of the United States Supreme Court, was presiding, he received an urgent call to Baltimore. It was imperative that he should go at once.

He left the bench and hurried to the old Baltimore & Ohio station, then not far from the Capitol. As he stepped up to the ticket window he found he had no money with him.

"My friend," said the Chief Justice, "it is imperative that I shall go to Baltimore at once. I have no money with me. I am the Chief Justice. Will you kindly let me have a return ticket and I will reimburse you to-morrow?"

The ticket agent laughed, "You'll have to come stronger than that, old chap," he said. "Almost every day some chief justice or other tries to beat me out of a ticket."

The Chief Justice turned away. He approached several prosperous appearing per-

tender, "do you know me?"

"Nope."

"I am Chief Justice Waite of the United States Supreme Court."

"What do you want—a drink?"

"No, sir, I want you to let me have twenty dollars. I have suddenly been called to Baltimore, a train leaves in a few minutes, and I discover I have no means on my person. Will you do it?"

"Sure!" said the bartender, and he took twenty dollars out of the drawer and handed it to the Chief Justice.

◆ ◆ ◆

The following is taken from an old record:

Clerk's Office, November 1, 1839.

State of Arkansas, County of Arkansas—ss.:

I, George W. Stokes, Clerk of the Circuit Court of said county, do hereby certify that the above and foregoing is a true and correct copy from the sheriff's advertisement as published in the Napoleon Journal, as well as I could read the same from such a damn printed thing as it was, published in Napoleon Journal the fifth Monday in November, 1839.

Given under my hand. Geo. W. Stokes.

◆ ◆ ◆

In St. Louis there is one ward that is full of breweries and Germans. In a recent election a local option question was up. After the election some Germans were counting the votes. One German was calling off and another taking down the option votes. The first German, running rapidly through the ballots, said: "Vet, vet, vet, vet. * * *". Suddenly he stopped. "*Mine Gott!*" he cried, "*Dry!*"

Then he went on—"Vet, vet, vet, vet. * * *". Presently he stopped again and mopped his brow. "*Himmel!*" he said, "der son of a gun repeated!"

◆ ◆ ◆

"What are they moving the church for?"

"Well, stranger, I'm the mayor of these diggin's, an' I'm fer law enforcement. We've got an ordinance what says no saloon shall be nearer than three hundred feet from a church. I give 'em three days to move the church."—*Successful Farming.*

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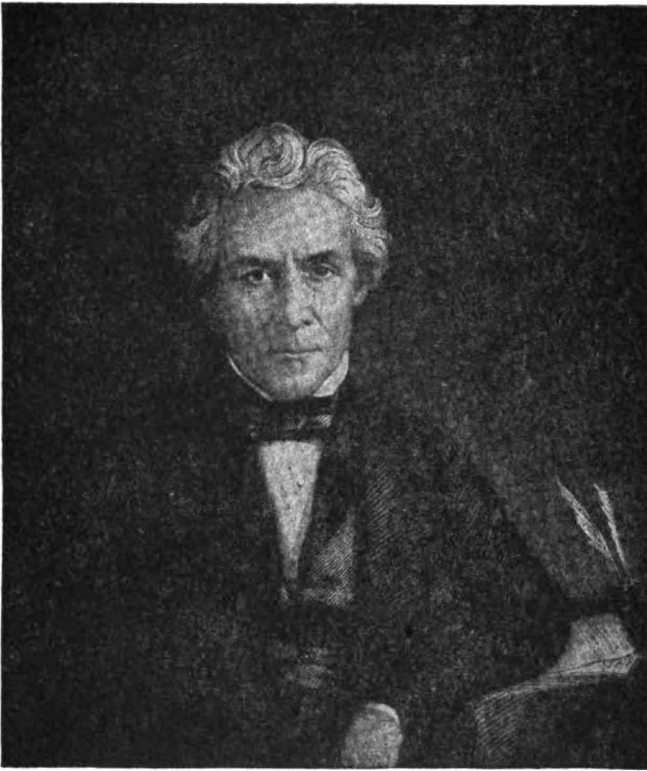
An Intercollegiate Law Journal

A. F. MASON, Editor

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and
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Revision
1914

JOHN BOUVIER. 1787-1852.

What it offers the law student and young lawyer

Bouvier, in the preface to his first edition, sets out in an interesting way the difficulties which he encountered on entering upon the study of the law. While the needs of the law student are much the same to-day, the means of supplying them are vastly different. The present-day student is beset, as was Bouvier, with two difficulties: First, he must know the meaning of legal words and terms which he encounters in his studies; second, in the study of any subject or topic of the law, he finds references to other branches, subjects or doctrines which he has not yet taken up, and in order to pursue his studies intelligently he must have access to a reference book which gives him this information in elementary but complete form.

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A. F. MASON, Editor

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Nos. 11-12

Analysis of Facts—Salient Elements

By R. A. DALY

*Special Instructor in Some Forty Law Schools on the Subject of Analysis
of Cases and the Use of Law Books*

[Lecture delivered at Columbia University Law School, January
26, 1915, and at Boston University Law School, February 3, 1915.]

AT SCHOOL the student is taught the principles of law. When in practice he proposes to the court how they shall be applied. The court, however, applies them in the light of the precedents. Hence the need of cases in point as to fact.

The fundamental principles of the law are well known to the profession. No one disputes their existence. The lawyer knows in a general way their scope and the reasons that underlie them. It is to gain this knowledge of the principles of law, and to learn to think legally, that the student attends law school.

But when the facts of a specific case demand the application of principles, difficulties arise at once. One party contends that a particular principle governs the case. The other does not deny the existence of the principle, but he does deny that it applies to the case—that is,

to the particular facts of that case. Then the court demands precedents; that is to say, the court asks for cases decided in the past in which the facts were essentially the same, in order that it may see whether the principle in dispute has or has not been held to apply to such facts as those at bar.

This need for the case on all fours as to facts is stated by Moore, J., in the case of *H. M. Tyler Lumber Co. v. Charlton*, 87 N. W., on page 269, when he says: "The trouble is not so much with the rule of law as it is in the application of it for a given case." It is illustrated by the following:

Take a well-known general principle in the law of Torts:

"When one is injured by the negligence of another, if his damage has not been increased by his own subsequent want of ordinary care, he will be entitled to recover of the wrongdoer to the full extent of the damage."

Merely to know the principle is not sufficient, for we cannot apply it until we first decide two important questions, namely: What acts of parties constitute ordinary care? and what constitutes the full extent of the damage? The following cases will illustrate the difficulty:

1. A. negligently placed a stake in a public street, against which the horse of B. ran and was injured. B. at once employed a veterinarian, who said he thought there was a chance the horse might be cured. Subsequent development, however, showed that a cure was impossible. B. now seeks to recover the value of the animal and full compensation for moneys expended in trying to cure the horse, although it can be shown that such moneys expended exceed the value of the horse.

Did B. exercise that degree of care and prudence the general principle requires, and what is the full extent of his damage?

2. A. left his horse insecurely tied, whereby he broke away and ran, with the wagon to which he was attached, into B., severely injuring him in his person. B. employed a physician of good standing and reputation; but it can be shown that the physician neglected to apply the most approved medical treatment in such cases, namely, administering currents of electricity to the injured parts, and that for want of such treatment his condition was rendered worse, and the injury is now likely to be permanent.

Did B. exercise that degree of care and prudence the general principle requires, and what is the full extent of his damage?

3. A railroad company obstructed access to its depot, causing a lady passenger to stand outside, exposed to the cold, for an unreasonable time, resulting in her loss of health. Is the carrier liable to the full extent of her damage, when it can be shown that such exposure was during her menstrual period, when it can also be shown that there was a store at a short distance from the platform, into which she might have gone, but that the woman in charge of said store was of bad repute, and the passenger, knowing this, refused to go there?

Did the passenger exercise such degree of care and prudence as the general principle requires?

4. A passenger, already suffering from a physical disability, is hurt in a collision, and

said disability greatly aggravated. Immediately after the injury the passenger employed a physician, but admits that he did not secure the best medical assistance possible, and as a result the wound did not receive the most approved treatment.

Did the passenger exercise such degree of care and prudence as the general principle requires, and what is the full extent of his damage?

All these cases are governed by the general principle above stated; yet the kind and character of care and prudence required by the parties is different in each case, according as the facts are different, so that, while such a selection of diverse facts may be of considerable value to one in the business of teaching a legal principle, to show the scope of such general principle, not one of them could guide a court or the practicing lawyer in determining any other.

Assume, however, that we are interested in the second case. Examining a digest, which states the essential facts, and in which all reported cases are digested, we find the following, which clearly squares with our statement and assists in determining how the principle should be applied:

"Where the person injured used ordinary care in selecting the surgeon who treated him, and who amputated his foot, he could recover for loss of his foot, though the physician made a mistake in amputating it."

The important phase of search, then, is for facts, for decided cases wherein the specific matters and things disputed correspond with the specific matters and things in dispute in the present case, because, when such cases can be found, the specific application of the principle to such facts can be determined at once. Until facts exist, a general principle is but an airy nothing, without a local habitation or a name.

In any digest or encyclopedia cases are distributed under various and sundry different topics. The topic under which

each case shall be placed in a digest and encyclopedia is determined by the facts which are peculiar to it.

Success in looking up the law in any set of books and upon any proposition depends upon accurate analysis of the facts in the case. As we shall see later, the actual work of finding authorities presents few difficulties, if the preliminary analysis is accurate.

By analyzing the facts we mean formulating the problem presented by the facts of that case; i. e., ascertaining what question of law is to be investigated and decided.

Every case that has ever arisen and every case that can arise has four elements. These elements are:

1. Subject-matter.
2. Parties concerned.
3. Cause of action or ground of defense.
4. Object of action.

These are the elements which exist in every case. There is another element, however, which may arise in a case, namely:

5. A point in controversy other than the cause of action.

To test this fundamental proposition of analysis, let us resort to the rules of pleading.

An action is commenced by a complaint or declaration. What should this complaint contain?

First. It is obvious that there must be parties; and if any special relation exists between them, by reason of contract or otherwise, this relation will appear. So, also, if recovery depends upon the plaintiff's or defendant's belonging to any special class of persons, or being engaged in any particular occupation, this will appear.

There will be one or more such parties to the action; but, in addition, there may be other persons who, though not

parties to the action, are nevertheless concerned in the action. As, for instance, the defendant's agent who committed the tort, or the payee of a note whose indorsee sues the promisor.

Accordingly, the element "Parties Concerned" should be understood to include all persons who are necessarily concerned in it, because their acts or omissions gave rise to it, or because of their relation to the actual parties.

Second. The complaint must contain facts showing a cause of action. Thus, if the action is one in tort, the acts or omissions constituting the tort must be set forth. As pointed out by Mr. Pomeroy in his work on Code Remedies, the cause of action in any case consists of the following things:

1. A primary right in favor of the plaintiff (which may be a natural right, or may arise by reason of a statute, or may be created by contract, or may grow out of and as incident to the relation existing between parties concerned), with a corresponding or resulting obligation, positive or negative, resting on the defendant.
2. A violation by the defendant of such primary right, resulting in
3. Injury or damage to the defendant, and giving rise to
4. A secondary right to relief through the process of law.

In analyzing the facts of a case we may think of the cause of action as the act or omission violating these legal rights, and the consequent injury therefrom; i. e., the matters and things of which we complain.

Third. In stating a cause of action a subject-matter will appear. By a subject-matter is meant a thing or place which had necessarily to exist before the particular trouble could arise. One cannot bring an action to replevy a horse un-

less the horse exists. One cannot be injured by falling into an unguarded excavation if there is no excavation. A slaughterhouse must exist before it can be a nuisance. If Z. forecloses a mortgage, the mortgage must be a mortgage upon some specific property. So the horse, excavation, slaughterhouse, and the land, upon which the mortgage is predicated, are subject-matter.

Suppose, now, that A. files a complaint against B., in which the parties are sufficiently indicated, in which the subject-matter is set forth, and in which a good and sufficient cause of action is stated. Such a complaint is incomplete, in that a court will not allow damages for injury, enjoin a nuisance, issue a writ of mandamus, restore to A. the possession of his horse, order the sale of the mortgaged premises, or, indeed, make any move upon the basis of A.'s complaint, unless A. himself indicates his object of action—the relief sought.

It is the relief for which A. prays which indicates the object of his suit or action—the result he desires to obtain. It may be damages, an injunction, a writ of mandamus, the possession of lands, or any other result, to obtain which legal or equitable proceedings can be instituted.

It is evident now that there is nothing new or startling about our original statement that every case has four, and only four, essential elements. Before proceeding to analyze particular statements of facts, it may be well to consider that fifth element which may arise in the case, viz.: "A point in controversy other than the cause of action."

Reverting to the pleading, let us assume that the plaintiff has filed a declaration containing the four elements already considered:

First. The defendant may deny the truth of the facts alleged. Under these circumstances, the only issue

raised is one of fact, to be settled by the jury.

Second. He may demur generally or specially, and so put in issue the sufficiency of the facts stated to show a cause of action between the particular parties or within the jurisdiction of the court. (For our present purposes, the fact that the same issue might be raised at some other point in the proceedings by motion for nonsuit, demurrer to evidence, etc., may be disregarded.)

Third. He may introduce new matter to constitute an affirmative defense. By so doing he does not raise any issue, but merely offers to the plaintiff a chance to raise an issue by either denying or demurring. He does, however, introduce into the case a new element, namely, the ground of defense which is or may become one of the "points in controversy other than the cause of action."

This fifth element should be understood to include the ground of defense or any other question of law which goes to the substantive rights of the parties.

It is possible that this fifth element might be subdivided, and that points of controversy other than the cause of action might be divided into various classes. However, this subdivision or classification would be of academic, rather than practical, value or interest.

The first four elements of the case are the essential elements. By an essential element is meant an element without which no case from which it is omitted could be complete. A complaint which omitted any of these four elements would clearly be incomplete and demurrable.

The fifth element may and often does occur, but it is not essential to the completeness of every case. It may consti-

mits the assault, and pleads affirmatively that, being captain of a ship on which the plaintiff was a sailor, he committed the assault in the enforcement of discipline. Here the only issue is whether such enforcement of discipline presents a good defense for the action for assault and battery. This is the point in controversy other than the cause of action. Whether the facts set forth by the plaintiff in his declaration state a cause of action is not in issue. The issue is whether the defense is good, so as to overcome the cause of action stated; it being admitted for the purposes of argument that if the defense is not good the plaintiff can recover.

In this connection it is important to remember that the defendant may plead several defenses separately. By so doing he will raise several points in controversy other than the cause of action. For the sake of clear thinking, it is of the utmost importance to keep these separate, and to study and develop each one as if it were the only issue in the case.

Again, it is possible for the defendant both to plead affirmatively and to demur to the complaint, so that both the existence of the cause of action and the adequacy of the affirmative defense may be in issue simultaneously. Here, also, the issues are distinct from each other, and must be studied separately.

It must not be assumed that this brief explanation is intended to exhaust the ways in which a "point in controversy other than the cause of action," which constitutes the fifth element of the case, and of which several may grow out of the same statement of facts, can be raised. We are not concerned so much with how issues may actually be brought before the court in practice as with the na-

(whether by common law or code), rather than the details of pleading, which, applied to analyzing the statements of fact, is so helpful and enlightening.

The foregoing discussion will be more readily understood if specific cases be considered.

1. A. owned a large country place on the Connecticut coast. His grounds extended down to and along the bank of an inlet of the sea. Here he owned a large private wharf, extending out into the water about 150 feet. A. made a contract with X. for the construction of various barns and other buildings on his grounds. The contract provided that X. should be entitled to land materials at A.'s private wharf. While these buildings were in the course of construction, a schooner loaded with granite from the quarries on Cape Ann arrived at the wharf, and was moored at the end of it. The next morning, when the tide was high, A.'s servant, B., who had charge of the wharf, directed the captain to move the ship around to the south side of the wharf and to moor it there, so as to permit another schooner to be tied up at the end. This the captain did. At its new berth, the ship floated directly above a sharp ledge, which, although wholly submerged at all times, reached to about three or four feet below the surface at low tide. Neither B., who was newly employed, nor the captain, knew of this dangerous rock. As the tide went down, X.'s ship first grounded upon the ledge, and later was left hanging upon it, partly out of the water. The weight of the cargo was so great that, as the tide fell still lower, the ship buckled and broke apart in the middle. X. sues A. Can he recover for the loss of his ship?

Assuming a demurrer to X.'s com-

plaint, we are concerned only with whether the facts set forth include all the four essential elements. If they do, then X. can recover. If any element is missing, X. cannot recover.

What are the various elements of this case?

A. SUBJECT-MATTER.

In this case there are at least three things which are subject-matter, namely:

(1) The vessel; (2) the wharf; and (3) the obstruction to the wharf.

If any of these three things had not existed, the case would not have arisen. With regard to the third, it is immaterial whether the obstruction consisted of a ledge of rock, or a sandbar, or some other object, provided there was some obstruction which rendered dangerous the mooring of a vessel on that side of the wharf.

B. PARTIES.

No special legal relation exists between the parties, but one of them belongs to a special class of persons; i. e., wharfinger. It is as the owner of the wharf—i. e., as a wharfinger—that he is being sued.

C. CAUSE OF ACTION.

The plaintiff here complains of an injury to his vessel. He claims that it was due to the defendant's failure to provide a safe wharf, or to notify him of the dangerous obstruction. This assumes that, as the plaintiff was rightfully using the wharf, the defendant wharfinger owed him a primary duty to see that the wharf was safe and unobstructed or to notify him of any existing danger. If the plaintiff's claim is correct, then we have an injury due to a breach of a primary duty by the defendant.

D. OBJECT.

The remedy which is the object of the plaintiff's action is damages.

A demurrer to a complaint setting forth the above facts would put in issue

the existence of the primary duty; that is, it would dispute the existence of a cause of action, the fact that the vessel was injured being admitted.

Thus far reference has been made only to cases of substantive law, where the issues go to the merits of the case. A different, but similar, analysis is applicable to cases of procedure.

That the existence of any question of procedure necessarily presupposes the existence of a dispute involving substantive rights is too obvious to require argument.

Precisely the same question as to procedure may arise out of two cases in which the facts and the issues of substantive law are totally different. Suppose, for instance, that during the trial of an action, and after all the evidence has been taken, a member of the jury dies from heart failure while in the jury room. The defendant moves for a new trial. Obviously it is immaterial whether the case at bar is one involving an alleged conversion of lumber by the defendant, or an action for breach of contract, or whether it is a personal injury suit.

Disputes as to matters of procedure will include all questions of evidence, pleading, witnesses, etc. That it is often difficult to distinguish at once whether the question is one of substantive law or of procedure does not make the distinction any the less important. A little careful study of any point will usually clear up this difficulty.

The solution of a problem of analysis presented by a question of procedure will be understood most easily if a specific case is considered.

During the trial, one of the witnesses for the defendant was mildly, but obviously, intoxicated when called to the stand. Exception was taken by the plaintiff to the admission of his testimony,

on the ground that intoxication rendered the witness incompetent.

What are the essential elements of this point of procedure—those which must exist in every case? There are four such elements:

1. Subject-matter of controversy. This is the substantive thing which must exist in order that the dispute may arise, or about the existence of which the parties are disputing. It may or may not be tangible, physical, subject-matter. In the present case it is intangible—the competency of a witness.

2. There must be parties concerned. Parties to the dispute are usually plaintiff and defendant, as such; but, though essential, they are not necessarily the salient parties. For instance, in the present case the only salient party concerned is the witness.

3. There must be a ground of controversy. (The controversy arises in a procedural point, upon some motion of the regular parties to the case, or upon some act or some move made by one of the parties, like an objection to the evidence.) This motion, exception, or objection, which is necessary to bringing a “procedural point in controversy” before the court, corresponds to the pleadings which bring a question of substantive law before the court. It must have a reason or ground. In the present instance, one of the parties objected to the admission of certain testimony. Upon what ground? On the ground that intoxication rendered the witness incompetent. Therefore intoxication is the ground of the objection. It corresponds to the cause of action in a case in which the substantive law is involved.

4. It is obvious that no motion, exception, or objection is or ever can be made without some purpose; i. e., some object which the party making it wishes to attain. The object of making this objec-

tion was the exclusion of the testimony of the witness.

So here, as in the main case, we have four essential elements, which are best described as the elements of a point in controversy relating to procedure.

I have told you that the pleadings should disclose certain essential elements. Now I want to tell you how these essential elements can be ascertained.

What do we mean when we say essential elements? Let us answer this question first.

It is one of the parts or elements of a case without which such case would be incomplete; no case would be complete without parties differing in opinion as to their respective rights; therefore the parties concerned in a case constitute an essential element or part of it.

What are the essential parts or elements of a case, and what specific matters and things does each element include?

As we have seen, they are:

1. Subject-Matter. This essential element includes all physical things and places which are perceptible through the senses, and without which there would be no cause of action, because there would be nothing to quarrel over.
2. Parties Concerned. This essential element includes persons of a particular occupation, class, or relation whose acts are complained of and who are concerned in the case.
3. The Cause of Action. This essential element is the one that explains the kind of injury complained of, or the act inflicting the wrong which resulted in such injury.
4. The Object of Action. This essential element is the one that describes the sort of relief the in-

jured party asks the court to give to compensate him for such injury.

Are there any other elements essential to every case? No; not to every case.

How many essential elements are there, then, to every case? There are never less than four.

What are some of the things and places which may be subject-matter? Automobiles; embankments; schoolhouses; garages.

What do we mean by persons of a particular class, or occupation, or relation? Children; aliens; collectors; principal and surety.

What are some of the injuries or acts that would constitute a cause of action? Personal injury (resulting from a violation of a primary right or duty) and boycott (which is an act violating such a right).

What do we mean by asking the court for relief? Asking for damages, possession of property, specific performance of a contract, etc.

Are these four elements the only elements that ever arise in a case? No; there is another element that sometimes arises, which, while not an element necessary to make a case complete, so that the parties can go to trial, is frequently an element of difference between the parties that must be dealt with by the court in order to later arrive at its ultimate conclusion. This element is called the Point in Controversy.

But is not the Cause of Action always a Point in Controversy?

If we take the "cause of action" in the sense of the third essential element of the case set forth in the complaint, it is not always an issue. That the complaint states a complete cause of action is often admitted.

But if we take "cause of action" to mean the ultimate right to recover as the net result of all the pleadings, it is always an issue. Even when the allegations of the original complaint, so far as they go, cannot be denied, but are admitted, and they are met by confession and avoidance, or new matter, the cause of action is a point in controversy. The claim then is that, while the complaint in so far as it goes is true, it does not go far enough; that is, does not tell the whole truth and that when the whole truth is set out there will be no cause of action. As soon as there is no question as to the cause of action, as soon as it is no longer a point of controversy, there is no action; the whole fabric falls; there is nothing to which you can attach a subsidiary point of controversy. To say to the contrary would be to present an enigma.

But, in whichever sense we use "cause of action," there may arise during proceedings in the case many points of controversy other than the cause of action and many procedural points in controversy.

As an illustration of the latter, assume an action for money loaned. The cause of action may be nonpayment; the point of controversy may be regarding the admission of certain evidence.

To bring out a little more clearly, perhaps, the mental process in determining the Point in Controversy, let us imagine a conversation between members of the legal fraternity.

Jones: "You say the subject-matter in your case is a mine and a slab of rock; the parties concerned are a miner and a mining corporation; the cause of action is a personal injury received by the miner; the object of the action is to get relief in damages?"

Smith: "Yes; these are the four essential elements of my case."

Smith: "No."

Jones: "Does the corporation deny that the man was injured in their mine?"

Smith: "No."

Jones: "Then why does not the corporation pay the damages?"

Smith: "The corporation says the miner assumed the risk, and so they are not liable."

Jones: "What does the miner say to that?"

Smith: "He says that it was not a safe place to work and that he did not assume the risk."

Jones: "Does the corporation admit that it was not a safe place to work?"

Smith: "No; they say that the place was safe."

It is evident that the Points in Controversy are "assumption of risk" and "safe place to work."

Now let us summarize:

We have seen what is meant by essential elements, and have ascertained that these are in every case—

1. Subject-Matter,
2. Parties Concerned,
3. Cause of Action,
4. Object of Action,

and in some cases

5. The Point in Controversy Other than the Cause of Action.

In studying any case the best way to analyze it is to ask yourself the following questions:

1. *What is the thing or place without the existence of which the dispute could not have arisen?* (There may be several things which are subject-matter.)

2. *Does any special legal relation exist between parties concerned in this action? If not, then does any party concerned belong, for the purposes of the case, to any particular class of persons or to any particular occupation?*

the defendant does the plaintiff complain?

(b) *What primary right or what corresponding primary duty did this act violate?*

(c) *How did the plaintiff get this primary right?* (Differently stated, how did the duty resting on the defendant arise?) *Was it a natural right? Was it created by statute? Or given by contract? Did it arise out of, or as necessarily incident to, a relation existing between parties concerned in the case?*

(d) *What was the result of the defendant's act or omission?*

4. *What particular redress does the plaintiff seek to obtain by his action?*

And finally—

5. *What is the ground of defense or other particular point of dispute?*

Of course, the foregoing questions apply to matters of substantive law. In dealing with matters of adjective law, a similar method may be followed, although the particular form of each question will necessarily differ somewhat.

When these questions have been properly answered, the analysis is complete, and you are in a position to state the legal question involved in the case. Necessarily this question is always formulated in terms of the elements of the case—i. e., in words describing these elements.

Every statement of facts that arises in your practice should be analyzed into these four (or five) elements. The purpose of this analysis is to bring out the question of law involved. When this

for authorities—I. e., for cases in point or statutes applicable to the facts.

The analysis of the facts has an additional value and importance, because any intelligent search in any publication is necessarily based upon the elements of the case. Thus, as we proceed with the solution of problems, we shall see that the words descriptive of the salient element around which the specific case re-

the American Digest System, in the "Index and Concordance of Cyc.," in the Digests of the different systems of reports, and in the text-books and statutes.*

*In subsequent lectures and recitations in Professor Daly's course of instruction, specific statements of fact are analyzed by the methods above indicated, and authorities in point are then located in the several different classes of books. Editor.

Common Law and Modern Codes

By JOHN D. FLEMING

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I

ABOUT the year 1613, the year in which he was made Chief Justice of the King's Bench, Sir Edward Coke wrote these words by way of comment upon Littleton's exhortation to his student to have regard to the science of *well pleading*:

"Here is to be observed the excellency of good pleading, and Littleton's grave advice that the student should employ his courage and care for the attaining thereof, which he shall attain unto by these means, first, by *reading*; secondly, by *observation*; and thirdly, by *use and exercise*. For in ancient times the sergeants and apprentices of the law did draw their own pleadings, which made them good pleaders."

And he adds one of his quaint etymologies to the effect that *placitum*, a pleading (observe that he is speaking not in terms of prophecy), is derived from *placendo*, "because it *pleases* everybody."¹

Coke refers the perfection of the art of pleading to the reign of Edward III. "In the reign of Edward III," he says,

"pleadings grew to perfection *without lameness and curiosity*." And Lord Hale observes that, though pleadings in the time of some later sovereigns were "far shorter than afterwards, especially after Henry VIII, yet they were much longer than in the time of King Edward III; and the pleaders, yea and the judges, too, became somewhat *too ourious* therein; so that art or dexterity of pleading, which in its use, nature and design was only to *render the fact plain and intelligible, and to bring the matter to judgment with a convenient certainty* began to degenerate from its primitive simplicity, and the true use and end thereof, and to become a piece of *nicety and curiosity*."

And Lord Hale accounts for this needless length and nicety in part by the fact that the pleadings were mostly drawn by the clerks, who were paid *according to their length*, and therefore took care not to study brevity.²

What is the inherent difficulty in these mutual altercations between the plaintiff and defendant? Their obvious purpose is to analyze the merits of the cause, and to ascertain the precise subject of con-

¹ 3 Th. Co. Lit. 376.

² 4 Min. Inst. 608.

trovery preparatory to trial. We are told that the sergeants and apprentices in the old days drew their own pleadings. They are more frequently now dictated to a stenographer. After the abandonment of alternate allegations by word of mouth by the parties or their counsel, they would naturally fall into certain *formulae*, and we gather from Reeves' History of English Law that as early as the time of Edward I the declaration was drawn with form and precision and was liable to be excepted to if deficient in either of those qualities.³ But certain logical processes have not changed in all these centuries; and with all our progress and the demands of an advanced civilization certain necessities survive. For example: A. holds B.'s bond for \$500, and proposes to institute suit upon it. Being a teacher of law, I once asked a group of young men, novitiates in the subject, to draw up and submit to me, not necessarily in the dialectics of pleading, a statement of that cause of action. It was surprising how closely the best of them approached the accepted formula:

"This man B. owes me, A., \$500, as witness his bond here, which I now show to the court; yet he has not paid me."

Surprising, I say, even to the making of profert, about which these young men had received no instruction; and they were put upon honor against consulting the precedents or seeking outside assistance. Some failed, of course, but all sought for the essential allegations, and, what is to the point, having found them, as they thought, stowed them away for future use.

With what joy they read the Case of Henry Hawe.⁴ Henry Hawe, on Sunday, August 21, 1664, was at church in the parish of Wokingham, and during the service kept his hat on, when John

Planner, who was one of the churchwardens, requested him to take his hat off, which Hawe refused to do, whereupon Planner took it off, and Hawe brought this action.

I suspect that under the modern codes the complaint in the case of this resolute Quaker under different hands would have shown a widely varying intensity of thought, feeling, and expression. But how majestically the old declaration of *trespass vi et armis* marches along!

"Henry Hawe complains of John Planner of a plea of trespass, for that he, on the 4th of September, 1664, with force and arms, made an assault upon the plaintiff, and beat, wounded and ill-treated him, so that his life was greatly despaired of, and other wrongs to him did, against the peace of the King, and to the damage of the plaintiff in £700; and therefore he brings his suit."

Six lines upon the printed page! Mighty causes have thus arisen and been decided. The Dred Scott Case,⁵ which inflamed half a great nation, and perhaps provoked a war, but never a shot at the pleadings, was a simple action of trespass; likewise *Luther v. Borden* (Dorr's Rhode Island Rebellion),⁶ which enriched both precedent and history, and saved the day for the reformers, for the time at least, if it did not furnish models for their pleadings three-quarters of a century later in Oregon's initiative and referendum case;⁷ while the Dartmouth College Case,⁸ decided in 1819, spite of the storms and criticisms of a century, such as perhaps no other case ever called down, stands to-day firmly rooted in a declaration of trover.

Does the garb of these pioneers, trover, trespass, case, assumpsit, offend you? Would you cut out now as vanity such phrases as "so that his life was greatly despaired of," or "against the peace of

⁵ 19 How. 393, 15 L. Ed. 681.

⁶ 7 How. 42, 12 L. Ed. 581.

⁷ Pac. States, etc., Co. v. Oregon, 223 U. S. 118, 32 Sup. Ct. 224, 56 L. Ed. 377.

⁸ 4 Wheat. 518, 4 L. Ed. 629.

³ 2 Reeves' Hist. Eng. Law, 264.

⁴ 1 Saund. 10; 4 Min. Inst. 603.

the King," or people? Remember the buttons on the tails of your coats. Aside from their historical significance, of which the young have ever to be reminded, these embellishments in old pleadings have for me a peculiar charm, even when their utility is no longer perceived. So with their respective defenses, to be presently briefly noted, not omitting the special traverse of the *absque hoc*. I recall an answer served upon me by a gentleman of the "old school" some years ago in an action for damages for taking timber from the public domain. It began:

"The defendant, by J. Sam Brown, his attorney, comes and defends the wrong and injury when and where it shall behoove him, and the damages and whatsoever else he ought to defend, and says," etc.

Did I move to strike any of that out? No; for several considerations. I may not have been able before that federal judge. Besides, it worked no harm, and did not add much to the record. Then, too, that old common-law formula of "full defense," standing there at the top of the page, apprised me of the fact that I was to be met by no demurrer or dilatory plea, but by a plea to the merits; and, moreover, it fired my imagination, like "doubloons" or "pieces of eight" in a story book.

I once ran across a record of a mining claim called the *Nisi Prius*. I knew that a lawyer had been there in the mountains or thereabouts.

I should here explain, perhaps, that it is not the purpose of this paper to advocate a return to the system of common-law procedure as a whole, with all its special pleas, its feigned matters, such as, for example, that intricate and subtle fiction which the term "express color" came to represent. But it were well if its exactness and conciseness were not lost sight of, and to bear in mind that a certain residuum of these old forms re-

mains, and will probably survive whatever the agitation. My present object is mainly to refresh the recollection of the too inveterate code admirer, and to show that some of the things which he has condemned are really not so absurd as they seem.

Consider for a moment the much-aspersed *special traverse*. The reader will pardon me if I remind him that its essential requisites were, first, an inducement containing an averment of new matter constituting an indirect denial of some material allegation in the adverse pleading; secondly, the *absque hoc* or *et non* clause, constituting a direct denial of the same material allegation in the language in which it is made; thirdly, the conclusion, or offer of verification. For example, if in an action of debt on a bond the defendant should plead that he executed the bond by *duress*, the plaintiff may reply alleging new matter by way of inducement, to the effect that the defendant executed it of his own free will, and for a valuable consideration, without this (*absque hoc*) that he executed it by duress.⁹

A learned author justly says:

"This method of controverting a point by argument occurs in everyday disputation. Any person inexperienced in pleading would naturally meet the point of duress in the example mentioned by saying in behalf of the plaintiff (if the facts were at his command), 'The plaintiff paid full value to the defendant for the bond, which is a fact inconsistent with and repugnant to the pretended fact of duress, and therefore I say it was not executed under duress.'"¹⁰

I heard two boys disputing. One said to the other:

"You swiped my sled at the Hill School yesterday."

Plea by the other:

"I never was at the Hill School in my life, and I didn't take your old sled, and I can prove it."

⁹ Gould, Pl. c. VII, §§ 7-8.

¹⁰ Mar. Civ. Proc. C. L. 239, note.

Now, here was the "special traverse" with a vengeance—the indirect and direct denial, then the verification, everything complete, and issue joined, and trial at once by battle. No mystery or lawyer's trick about this. And so, out of its naturalness, or its human qualities, perhaps, the special traverse took its place.

II

Once upon a short time a man had a numerous family of children, with good old-fashioned names, John and Rebecca and Samuel and William and Mary Jane. Seized by the spirit of reform, he resolved to abolish these names as utterly useless and confusing. But one day he wanted one of them, and he said to his eldest born, but with some hesitation, "Here—you—you boy that I used to call John—come up here." Did he hope to save time and trouble by his expedient, or to escape the essential and enduring, if distracting, distinctions between William and Mary Jane?

If one wrongfully took and detained my horse, I had at common law the choice of redress in four forms of action, perhaps five, especially if the horse were sold—trespass, trover, detinue, replevin, *assumpsit*. My punishment was swift and deserved if from professional indolence or negligence I chose the wrong one, or sought to avoid the trouble necessary to such a perfect understanding of the case as would be requisite to adapt the declaration, or failed to consider the pleas according to the particular circumstances existing in it.

An idle attorney besought a brother
For something to read, some novel or other,
That was really fresh and new.
"Take Chitty," replied his legal friend,
"There isn't a book that I could lend
Would prove more novel to you."

Judge Gibson, of Pennsylvania, declared that known modes of proceeding according to the common law ought

never to be changed but to avoid some practical mischief or serious inconvenience,¹¹ while another distinguished judge of that state thought that the Pennsylvania act abolishing pleading a *fruitful source of writs of error*.¹² I should pass hurriedly over this field, but I cannot refrain from quoting from yet another Pennsylvania case, a later one, 1889. A quantity of *hams* had been sold and delivered to one *Sides*. Mr. Justice Mitchell, declaring that the plaintiff's statement was at least three times as long as a declaration in the established forms need have been, said:

"This case affords one among many examples of the failure of the so-called reformed procedure to accomplish anything towards the brevity, the clearness, the accuracy, or the convenience of legal forms. So long as the fundamental principles of our remedial jurisprudence shall be that upon conflicting evidence the jury shall ascertain the facts, and upon ascertained facts the judges shall pronounce the law, so long will it be a cardinal rule of pleading, by whatever name pleading shall be called, that the line of distinction between facts and the evidence to prove them shall be kept clear and well-defined. The notion of the reforming enthusiast that the average litigant or his average lawyer can make a shorter, clearer, or less redundant statement of his case, if left to his own head, than if directed and restrained by the settled forms, sifted, tested and condensed as they have been by generations of the acutest intellects ever devoted to a logical profession, is as vain as that of any other compounder of panaceas."¹³

From Kentucky come the same criticisms of the reformed system;¹⁴ while this stricture is from the Supreme Court of the United States in a case which came up from Texas. Said Mr. Justice Grier:

"Had this case been conducted on the principles of pleading and practice known and established by the common law, a short declaration in *assumpsit*, a plea of *non assumpsit*, and of *non assumpsit infra sex annos*, would have been sufficient to prepare the

¹¹ 2 Pen. & W. 184.

¹² 8 Serg. & R. 265; 4 Min. Inst. 609.

¹³ *Hubbard v. Tenbrook*, 124 Pa. 291, 16 Atl. 817, 2 L. R. A. 823, 10 Am. St. Rep. 585.

¹⁴ 14 B. Mon. 85.

cause for trial on its true merits. But unfortunately the District Court (of Texas) has adopted the system of pleading and code of practice of the state courts; and the record before us exhibits a most astonishing *congeries* of petitions and answers, amendments, demurrers, and exceptions—a wrangle extending over more than twenty pages, and continued nearly two years, in which the true merits of the case are overwhelmed and concealed in a mass of worthless pleadings and exceptions, presenting some fifty points, the most of which are wholly irrelevant and serve only to perplex the court and impede the due administration of justice. The merits of the case, when extricated from the chaos of demurrers and exceptions in which it is enveloped, depend on two or three questions, simple and easily decided.”¹⁵

The old names, the old forms, the old manner of saying and doing things—how they appeal to one who keeps still the quiet way, and who refrains out of his “own head” to go galloping! It is such considerations, I suppose, that have influenced lawyers time out of mind to begin a power of attorney with the words, “Know all men by these presents,” and to end a general release with “from the beginning of the world until the present day.” That suggests the crack of doom, and many a recalcitrant has stood in awe thereof. Does the strident voice of the district attorney quite compensate for the loss of the words in his indictment, “to the evil example of all others in like manner offending”? And will ever flattery soothe the ear of those who now listen in vain for the formal parts of a bill in equity, from “humbly complaining” down to the prayer for “the most gracious writ”? Truly these are as the “snows of yester-year,” and their day, I fear, has passed as utterly as the days wherein Herod was king of the Jews.

III

It is a far cry through these centuries from the days of Edward III, when pleadings were without lameness and

curiosity. “Time hath a wallet on his back into which he puts alms for oblivion.” Reforms in pleading and procedure have been a favorite sport of the English Parliament; but it must be said in justice that the game has generally been played by those who knew its requirements. There were wise men to give directions among the most riotous of the legislators assembled around Glanville and Bracton. Men of substance, too; such as would not have provoked the wrath of that Virginia lawyer of whom Professor John B. Minor (of blessed memory) used to tell his classes. “The idea,” said that protestant, “of sending a man to the legislature to make laws concerning *meum* and *tuum* who has nothing *suum*!” Not many of these laws became a precedent to vex either the state or the profession from the time of Glanville on, if we except perhaps the Supreme Court of Judicature Act of 1873—called by some, in imitation of a contemporary American episode, the “Crime of ’73.” A short reference to some of these may not be out of place.

It has been aptly said that in the old days the maxim of the common-law courts seemed to be, “No writ, no remedy;” but in extenuation it may be added that in the age of Glanville if the clerks in chancery had no writ to suit the case they got busy and made one—made them, that is, until restrained by the Provisions of Oxford in 1258 in the turbulent reign of Henry III, which commanded the Chancellor to issue no more writs, except writs “of course,” without direction of the King and his council. This in turn a few years later (1285) occasioned the Statute of Westminster II, which provided that:

“Whensoever from henceforth it shall fortune that in one Case a Writ is found, and in like Case falling under like Law, and requiring like Remedy, is found none, the Clerks of the Chancery shall agree in making the Writs.”

¹⁵ *Randon v. Toby*, 11 How. 517, 13 L. Ed. 784.

Or, if the plaintiff and the clerks cannot agree, the matter shall be referred to the next Parliament, when

"by Consent of Men learned in the Law, a Writ shall be made, lest it might happen after that the Court should long time fail to minister Justice to Complainants."¹⁶

Says a late learned work, speaking of the period prior to the Provisions of Oxford:

"A new form of action might easily be created. A few words said by the Chancellor to his clerks, 'Such writs as this are to be issued for the future as of course,' would be as effectual as the most solemn legislation. As yet there would be no jealousy between the Justices and the Chancellor, nor would they be easily induced to quash his writs."¹⁷

We may be pardoned a simple illustration showing how the Statute of Westminster II worked out. Thus, before the statute, if A. threw a stick at B. and it hit him, A. was guilty of a trespass. But if A. simply threw a stick in the road and B. fell over it and barked his shins, A. was not guilty of a trespass. The statute gave a remedy in the second case as well as the first. And the new action was called "Trespass on the Case," and lies to recover damages for the indirect or consequential result of the force applied. So out of this statute grew up "Trespass on the Case on Promises," or "Assumpsit," as it came to be called.

A tramp strolling by a hayfield saw the laborers there vainly striving to get the hay under shelter against an approaching storm. He jumped over the hedge and the hay by his help was safely housed. He had not been asked. Could the tramp recover for his labor? No—not before the Statute of Westminster.¹⁸ Reflecting on the justice and conscience of a plaintiff's cause, such as this, induc-

ed Lord Mansfield to say that the action upon the case was in the nature of a bill in equity, and, in effect, is so.¹⁹

The act of 1833 delegated to the judges in England a further task of reform, renewed from time to time afterward; and in pursuance of that statute, though all was not done which was permitted, were promulgated the celebrated Hilary Rules of 1834. Amongst other reforms those rules still further abbreviated the pleadings, and greatly narrowed the scope of the general issue in pleas, substituting allegations better adapted to ascertaining with definiteness the subject of dispute.²⁰

There is to be perceived in this imperfect sketch of the growth of the procedural law of England, sometimes retarded, sometimes aided by legislation, a tendency over all to leave it to those "learned in the law" to work out that better maxim, "No right without a writ," "No wrong without a remedy," which finally became the boast of its jurisprudence. Pity it was, too, that in the process the courts of the common law did not work out that remedy so as to make it "plain, adequate and complete" for all the altercations of men. Blackstone, referring to the action of trespass on the case, says that this

"provision (with a little accuracy in the clerks of chancery, and a little liberality in the judges, by extending rather than narrowing the remedial effects of the writ) might have effectually answered all the purposes of a court of equity, except that of obtaining a discovery by the oath of the defendant."²¹

Nor is there wanting a more modern witness. Austin says, characteristically, that:

"Equity arose from the sulkiness and obstinacy of the common-law courts, which refused to suit themselves to the changes which took place in the opinion and in the circumstances of society."

¹⁶ 13 Edw. I, c. 24; Imp. Eng. Stat. 16.

¹⁷ 1 Pol. & Mait. 149.

¹⁸ Keene's Cases on Pl. 144.

¹⁹ Bird v. Randall, 3 Burrows, 1345.

²⁰ 4 Min. Inst. 609.

²¹ 3 Bl. Com. 51.

Nor yet one more ancient and grave. Fairfax, a very learned judge of the time of Edward IV, was of the opinion that the *subpoena* (in chancery) would not have been half so much in use if the common-law judges had been alert and "maintained" their jurisdiction.²²

There were other common-law writs besides that of Case which performed the function of a bill in equity. Such was the writ of *Ne injuste vexes*, for example, which *restrained* a grasping landlord from distressing his tenant; the writ of *Curia claudenda*, which compelled an adjoiner to put up and keep up his part of a line fence; and the more familiar writ of *Estrepement* for the prevention of waste. These writs, it will be observed, were true equity writs—*personal* and *coercive*, rather than *compensatory*, or *in rem*; and their history appears to justify Blackstone's strictures. Suppose, in the case of the last mentioned, the judges had extended its remedial function to the protection of shade and ornamental trees, as, it seems, they might, instead of narrowing it for the preservation of timber trees alone, as in fact they did—would not some fish have been spared the chancery net? These digressions need not be pursued; but in this connection it perhaps remains to be said that if the only equity quality lacking in these common-law writs was their power to compel a discovery, as intimated by the great English commentator, then two lines of statute could have added that power, unless, indeed, some judge had been previously found to screw his courage to the sticking point. Then in due time would the age-long controversy between law and equity have been settled, at least so far as the forum and methods of procedure for the prosecution of suits are concerned, and the great judge whose name is mentioned at the begin-

ning of this paper been spared the humiliation of having his judgments at law justly arrested by injunction from a chancellor by no means his peer in learning or virtue and after a contest the bitterest in judicial history.

In our own country civil procedure remained practically unaffected by the English reforms of 1834, except that the influence of the Hilary Rules of that year may be seen in modified form, on account in most instances of legislative interference. But great changes were soon to come. Growing pains first became acute in New York. Zeal to prick this limb of the body politic, born of indolence mostly, or ignorance of its good parts, gained rapid headway; so that now the distinctions between actions at law and suits in equity and the distinct forms of actions and suits have been abolished by the legislatures in a majority of the states, and one form, the same for law and equity, denominated generally a "civil action," is ordained for the enforcement or protection of private rights and redress or prevention of private wrongs.

True, the distinction between contract and tort apparently remains in many state constitutions,²³ from which it will probably refuse to be driven by the legislature; but the names of our old friends, debt, detinue, assumpsit, trover, trespass, case, replevin, ejectment, and forcible entry and detainer, still appear in the registry of the general statutes in all of these states, enacted before and since their codes, and all come up on occasion to be voted, unconscious of the fact that they are dead; forcible entry and detainer even to this day boisterously advancing "with strong hand and multitude of people"—the dress that he wore and the

²² See Colorado Bill of Rights, § 12, and similar provisions in California, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Nevada, Ohio, Oregon, Tennessee, Texas, Washington and Wisconsin.

²³ 2 Chitty, Bl. 42, note citing Y. B. 21 Edw. IV, 23.

people." It were indeed a bold adventurer who should attempt to pry that out of the statute books.

Who drives the chariot of the sun
Shall lord it but a day.

We wish that we could see the conclusion of the whole matter. A uniform code system adapted to all the states is beyond the dreams of those who are still attached to many of the ancient traditions; perhaps it is not practicable, even "with the consent of men learned in the law"; but that there remain, even yet, lawyers who do not disdain the trammels of custom, is proven by the experience of Illinois, with its admirable practice act, which has through many years withstood the assaults of the code-mongers.²⁵

I close this article with a quotation from one who was for many years an

²⁴ Bac. Abr. For. Ent. A, 321.

²⁵ See attempt to "get back" to surer ground in the remarks of the President of the Colorado Bar Association (Rep. Colo. Bar Ass'n 1913, p. 163), commenting on a recent act of the Colorado Legislature giving to the judges of the Supreme Court power to prescribe rules of practice and procedure in all inferior courts of the state.

Law School. Writing in 1899, he said:

"The merits of the New York Code will have to be diligently sought for in nearly four thousand sections of statute law, burdened with a gloss of countless decisions. Although the new English system of procedure has been in force only half as long as the Civil Code of New York, its merits will have to be ascertained from the Annual Practice compilation, which presents to the student an intricate and tangled net of statutory provisions, court orders and judicial interpretations. The expectations of the founders and friends of these systems have not been fulfilled; and the increasing complaints against them would seem to indicate that the best method of presenting and determining the issues between litigants in modern jurisprudence remains to be developed."²⁶

Littleton's exhortation to his student surely should be heeded. To what end? To the end that "Old Father Antic, the Law," to use Falstaff's phrase, may be cured of his "lameness" and strike a steady pace. For which consummation, "devoutly to be wished," petitioner, as in duty and affection bound, will ever pray.

²⁶ Mar. Civ. Proc. at C. L. p. 339.

An Existing Defect in the American System of Legal Education*

By HAMPTON L. CARSON
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I AM about to discuss what others, as well as myself, regard as an existing defect in the American system of legal education. Before doing so, however, let me describe the successive steps by which our present system was reached. It will enable me to bring out into bolder relief the point intended.

Historically considered, educational systems designed to fit men for practice at the bar have been five in number in England, and three in America.

The most ancient one is that described by Sir John Fortescue in the *De Laudibus Legum Angliæ*, by Lord Coke in the preface to the third part

*A paper read before the Section of Legal Education of the American Bar Association at Washington, D. C., October 20, 1914.

of his Reports, and by Dugdale in his *Origines Juridiciales*. The period during which it prevailed ran from the reign of Henry III to the middle of the seventeenth century. Practically, it was the University System, using the word "University" in the mediæval sense. The eight or ten Inns of Chancery, attached to the four Inns of Court, were originally in fact, what in later years they became only in name, preparatory seminaries for the study of the grounds and principles of the law.

Fortescue writes of the students "learning and studying the originals, and, as it were, the elements of the law, who, profiting therein as they grew to ripeness, so were they admitted into the greater Inns of the same study, called the Inns of Court." This was the course followed by Sir Thomas More, who, after his education at Oxford, as his son-in-law Roper tells us, "was then for the studie of the lawe of the realme put to an Inne of Chancerie, called New Inne. He verie well prospered for his time, and from there was admitted to Lincolne Inne with verie small allowance, continuing theare his studie, until he was made and accounted a worthie utter barrister."

Coke speaks of the "Houses of Chancery," as erected for the young student, coming most commonly from one of the Universities, "to learn there the elements of the law," and then speaks of the "four famous and renowned colleges or Houses of Court," the Inner Temple, Gray's Inn, Lincoln's Inn, and the Middle Temple, and points out that "all these are not far distant from one another, and altogether do make the most famous university for profession of law only, or of any one human science that is in the world, and advanceth itself above all others, quantum inter viberna cupressus."

Ben Jonson, the dramatist—"rare Ben Jonson"—took a broader view, and dedicated his comedy of *Every Man out of His Humor* "to the noblest nurseries of humanity and liberty in the Kingdom—the Inns of Court." By humanity, he evidently meant classical learning—a meaning of the word which is now almost lost by disuse, but very common in old English writers. Dugdale gives a minute account of the exercises, mootings, and readings, and many details of an interesting nature which enable us to form an idea of the character of the studies anciently pursued, and then dwells on the lighter accomplishments of dancing and music, leading to revels, banquets and masques.

Coke describes the nature of ancient readings, which he laments had greatly degenerated in his day, becoming, as he says, "rather riddles than lectures," and he compares the readers to "lapwings, who seem to be nearest their nests when they are farthest from them, and whose study was to find nice evasion out of the Statute" (Co. Litt. 280a). Roger North, in the life of his brother, Lord Keeper Guilford, states that his lordship was one of the last persons who read in the Temple in the ancient spirit of the Institution. However this may be, it is certain that about the middle of the seventeenth century, the ancient system fell into disuse, and the period of self-education for the English bar began. Students in the Inns of Court for about two hundred years were left to the guidance of their own intelligence, without the direction and authority of any recognized board of instructors.

This second period was marked by the appearance of treatises or guides for students. The earliest of these was Fulbeck's *Preparative or Direction to the Study of the Law*, "wherein is shewed what things ought to be observed and

used of them that are addicted to the study of the law, and what on the contrary part ought to be eschewed and avoided." In 1631 appeared "The English Lawyer," describing a "Method for the Managing the Lawes of this Land, and expressing the best Qualities requisite in the Student, Practizer, Judges and Fathers of the same. Written by the Reverend and Learned Sir John Doderidge, Knt., one of the Justices of the King's Bench, lately deceased." This was followed by the "Studii Legalis Ratio," or Directions for the Study of the Law, by W. Phillips, in 1675, and the book is much commended by Roger North in his "Discourse on the Study of the Law," which last named book, strange to say, seems to have remained in manuscript until 1824.

But the most famous of the schemes of study belonging to this period was that furnished by Sir Matthew Hale in the preface written by him to Rolle's Abridgment. He expresses the importance of method in order to retain what is read, and gives an outline of a course. "First," he says, "it is convenient to spend about two or three years in the diligent reading of Littleton, Perkins's Profitable Booke, Doctor and Student, Fitzherbert's Natura Brevium, and especially my Lord Coke's Commentaries, and possibly his Reports. This will fit him for exercise, and enable him to improve himself by conversation and discourse with others, and enable him profitably to attend the Courts at Westminster." This was to be followed up by the making of a commonplace book, divided into alphabetical titles, gathered by observing those in Brooke's Abridgment, or possibly Rolle's. Then it was fit to begin to read the Year Books, the Book of Assizes, and so down in order of time to the law of Plowden, Dyer, Coke and recent reports; and, as the

student read and commonplacéd, he was to compare case with case, and to compare the pleadings of cases with the Books of Entries, "especially Rastell's, which is the best, especially in relation to the Year Books." This course is substantially adopted by Roger North in his Discourse, although there are a few variations in the order of the books.

Finally, in the reign of George II, Sir Thomas Reeve, Chief Justice of the Common Pleas, in giving advice to his nephew, bids him begin with a reading of Wood's Institutes, "with an intent to understand only the general divisions of the law," and, as a means for understanding legal expressions, recommends *Les Termes de la Ley*, and Jacob's Dictionary, to be followed by Littleton's Tenures. "Thus armed," he writes, "venture upon Coke's Comment or Institute upon Littleton's Tenures, which being well understood the whole is conquered, and without which a common sound lawyer can never be made." There is enough agreement in these schemes of reading to justify us in characterizing the second period as The Text Book Period.

Then comes the third period—that of Private Tuition, leading to the practice of Education in the Chambers of a Barrister, Conveyancer, or Special Pleader. Lord Somers was the first student in the Middle Temple who conspicuously attended chambers—those of Sir Francis Winington—going there "to see and assist in the business which was going forward." Thurlow attended Mr. Chapman's office, Lord Hardwicke was regularly articulated to Mr. Salkeld, and his fellow students were Parker, afterwards Chief Baron of the Exchequer, Jocelyn, afterwards Lord Chancellor of Ireland, and Strange, afterwards Master of the Rolls.

Lord Mansfield, a biographer tells us,

"never had the advantage of being initiated in the mysteries of legal warfare by any practitioner," but "the pupilizing system," as Lord Campbell calls it, was vigorously pressed by the well known Samuel Warren and Mr. Justice Buller, the latter being one of Lord Erskine's tutors. Sir Samuel Romilly placed himself, by the advice of a friend, under the direction of Mr. Spranger, an accomplished Chancery draftsman, and himself writes:

"I passed all my mornings and part of most of my evenings at his house. He had a very good library, which I had the use of; he directed my reading; he explained what I did not understand; he removed many of the difficulties I met with; and, what was of no small advantage to me, I formed a lasting friendship with a very kind-hearted and excellent man, who was universally esteemed, and who had a high character in the profession."

Sir Fitzroy Kelley, in addressing the Inns of Court Commission in 1854, declared:

"I found, and, as far as I know, everybody else with whom in my early professional life I was acquainted found, that the best, the most satisfactory, and the most rapid mode of acquiring an accurate and sound knowledge of the law, was to pursue a system of Legal Education at the chambers of a barrister and special pleader."

And Sir Hugh Cairns, in an address before the same body, said:

"Looking at the state of the profession, and the sort of acquirements which are necessary for a barrister in this country, my opinion is that it is absolutely necessary that any one who wishes to practice effectively as a barrister should have the advantage of spending two years, before he is called to the bar, in the chambers of a practicing barrister, or in some place where he will see the actual routine of business, and not only have opportunities of studying jurisprudence theoretically."

An additional feature was sometimes supplied by a painstaking tutor in the shape of lectures to pupils, and several famous text-books had their origin in office lectures to private pupils, such as Mitford on Equity Pleading, Preston on

Abstracts of Title, and Wood on Conveyancing. Mr. Warren, in his various works on legal education, gives distinct plans of pupilage, showing several of the combinations in which private tuition might be adapted to the different requirements of students who aimed at the common law bar, or conveyancing, or equity practice, or were as yet undecided as to what was the best branch to attempt.

There were some drawbacks, however, and these are best described by Lord Brougham, who was a student in the chambers of Sir Nicholas Tindal, afterwards the Chief Justice of the Common Pleas. He says:

"There is nothing like education for law students now. When I was in the chambers of Mr. Tindal, we seldom or never saw our master; we were told, 'Copy whatever you can lay hold of,' and with this injunction we were left to ourselves."

Experiences of this kind were not singular. It was felt that, if the mere student or theorist lacked practical knowledge, the purely practical man was lacking in comprehensive views of the reasons and mutual relations of legal rules. Such views could not be obtained with certainty in chambers resorted to for the sake of accumulating a mass of technical knowledge and readiness in its use. All tutors were not as conscientious or as thorough as Preston and Mitford, and the claims of clients often thrust aside those of pupils—at any rate, so far as to render irregular any large expenditure of time on their general instruction. Besides, the nature of the clients' business itself was likely to vary and be unsystematic. The arrangement and selection of topics, so important to sound methods, were frequently disturbed or dislocated, while the influx or examination of the tutor's papers were not always subject to the pupil's eye.

These causes led to a fourth change,

resulting in separate attempts in the Inns of Court at systematic instruction. This result was hastened by the examples set by the Universities of Oxford and Cambridge. The lectures of Blackstone in the chair established by Mr. Viner, at the former, and the labors of the Downing professors of English Law, at the latter, followed by lectures in London at University College and at King's College, stirred the Inns of Court to exertion. Sir James MacIntosh had a course of thirty-nine lectures on the Law of Nature and Nations, in the Inner Temple; Mr. Nolan had a similar course in Lincoln's Inn; Mr. Long, at the instance of Sir Richard Bethell, lectured on Civil Law in the Middle Temple. Mr. Spence was added to the staff of Lincoln's Inn as a Lecturer on Equity; Mr. Hall lectured on the Common Law at the Inner Temple; and Mr. Lewis lectured on Real Property and Conveyancing, Devises and Bequests, at Gray's Inn. Mootings were resumed, and there were fortnightly examinations in the subjects of the lectures, and prizes for meritorious work on the part of the students were established. But although the lecturers were able men, the attendance became so small that one by one the courses languished and then ceased.

Then came concerted action on the part of the Inns to establish and maintain a uniform system for the legal education of students before admission to the bar, and a Standing General Council of Legal Education was created, consisting of eight benchers, two to be chosen by each Inn. Elaborate prospectuses were prepared upon Constitutional Law and Legal History, upon Equity, upon the Law of Real Property, upon Jurisprudence and the Civil Law, upon the Common Law, and long lists of approved works were recommended for use or reference in connection with the lectures,

which were called Readings. Examinations were provided for under the direction of the Council, but with a veto to the Inns of Court on a call to the bar, even of one who had passed his examinations. Appointments of Readers were made and the work began, continuing for thirty years.

In the meantime, in 1854, the Inns of Court Inquiry Commission was appointed, with such eminent men as Vice Chancellor Wood, Mr. Justice Coleridge, the Attorney General, Cockburn, and the Solicitor General, Bethell, as members, who made many recommendations after a careful inquiry into the English, Scottish, American, and European modes of teaching law. Then came the Society for the Amendment of the Law, and a Committee of Inquiry of the House of Commons to report on the state of legal education. All these bodies recommended the establishment of a University of Law, under the control of the Inns; but the outcome seems to have been not much more than a zealous increase of the number of lectures by the Readers of the Inns. Thus the matter stood until Sir Frederick Pollock visited Harvard to participate in the tribute to Professor Langdell upon the twenty-fifth anniversary of his professorship, which had introduced a new system and marked an epoch in the method of teaching law.

To-day—which marks the fifth period—men are prepared for the bar under the supervision and according to the plans of the Standing General Council of Legal Education.

In America, three systems of legal education are distinctly marked. During the colonial period, about 150 young gentlemen went to London and entered the Inns of Court, the majority being from the Southern and Middle States, and, strange to say, but two from New England. Returning, they brought back a

knowledge of the law books most in use, and, what was better, they brought the books themselves. There is ample evidence of this in American libraries. Those who stayed at home were office pupils, left largely to their own devices in wandering through repulsive mazes, much as did their English and absent American brethren, by following more or less intelligently the scheme of Sir Matthew Hale.

Then a great light appeared. In addition to comparatively numerous copies printed in England, Blackstone's Commentaries were printed in Philadelphia in 1771, and among the subscribers were the subsequently eminent names of the Adamses, the Jays, the Huntingtons, the Dickinsons, the Livingstons, the Quincys, the Rawles, the Tilghmans, the Trumbulls, and the Wilsons. The effect upon student life was immediate. James Kent says:

"I retired to a country village, and, finding Blackstone's Commentaries, I read the four volumes. * * * The work inspired me at the age of fifteen with awe, and I fondly determined to be a lawyer."

Then came the second stage. A chair of law was founded in Virginia at William and Mary College in 1779; in the same year Isaac Royall gave property to Harvard College for establishing the professorship which still bears his name. In 1784, the Litchfield Law School in Connecticut—a private school—was begun, and in 1790 James Wilson delivered elaborate and comprehensive lectures at the University of Pennsylvania. These early efforts were followed during the greater part of a century by the more persistent and fruitful labors of Kent, Story, Sharswood, and still later by Dwight and Langdell. Instruction by lectures in a law school were associated with student work in the offices of active practitioners.

The creed of that day can best be stat-

ed in the language of men of that day. Horace Binney, writing in 1830, declared:

"There are two very different methods of acquiring a knowledge of the law, and by each of them men have succeeded in public estimation to an almost equal extent. One of them, which may be called the old way, is a methodical study of the general system of law, and of its grounds and reasons, beginning with the fundamental law of estates and tenures, and pursuing the derivative branches in logical succession, and the collateral subjects in due order. * * * The other is to get an outline of the system by the aid of commentaries, and to fill it up by a desultory reading of treatises and reports, according to the bent of the student, without much shape or certainty in the knowledge so acquired, until it is given by investigations in the course of practice. * * * The profession itself knows the first, by its fruits, to be the most effectual way of making a great lawyer."

George Sharswood, in 1856, in discussing the part of a law school in a system of legal education, wrote:

"A law school, law lectures and recitations, essays and forensic discussions, can act properly only as auxiliary to the studies of the law office. * * * I am firmly persuaded that nothing can nor ought to dispense with the necessity of a regular clerkship in the office of a practicing attorney. It is there alone the student can be rightly trained, daily watched, warned, directed and encouraged. The labors and avocations of an office are necessary, not merely to give some insight into business and prevent the growth of habits of indolence, but to keep the student from reading too many books, to oblige him to think more, and frequently to turn back and review what he has read."

Place beside the foregoing extracts the points insisted on by Professor Thayer of the Harvard Law School in an address read by him at Detroit in 1895, as Chairman of the Section on Legal Education of this Association, and we reach the third American system. He insisted that "our law must be studied and taught at the Universities as other great sciences are studied and taught, as deeply, by like methods, and with as thorough a concentration and life-long devotion of all the powers of a

learned and studious faculty." He dwelt upon the importance of research work, of historical study, of vast labors to enable men to understand the law, as having its roots in the past, and capable of reduction to intelligible theories of rights and remedies. After replying with much spirit to sneers at the labors of "the doctrinaire or closet student," he presented, *inter alia*, the following points:

(1) Limiting the task of an instructor to a single subject, or, if more than one, to nearly related subjects, "to the end that his work of instruction may be thoroughly done, and that, as the final outcome of his studies, some solid, public and permanent contribution may be made to the main topic which he has in hand."

(2) That instructors shall give substantially their whole time and strength to the work.

(3) That the pupils also shall give all their time to the work of legal study while they are about it. He adds:

"It is, I think, a delusion to suppose that this precious seedtime can be profitably employed, in any degree, in attendance upon the courts, or in apprenticeship in an office."

He was sternly against "systematic attempts to combine attendance at law schools with office work and with watching the courts." These views, which were those of a scholar of rare spirit and still rarer preparations, being strongly backed by the influences and sympathies which sustained Pollock, Maitland, Bryce, Dicey, and Anson in England against the squinting scorn of near-sighted critics, have so far won their way that it is safe to assert that in most law schools, certainly in those best known to the country at large, the really active members of the faculty devote their time exclusively to the duties of their chairs, and the student body is, in the main, no

longer known to the offices of practitioners.

The change is fundamental and in a certain sense revolutionary. It has led to the surrender of the practice prevailing in America from the first years of the nation, a practice based upon that prevailing in England during the third historical period of development, and so strongly supported by Binney and Sharswood, and approved by such lawyers as Lord Cairns and Sir Fitzroy Kelley and Sir Samuel Romilly. In cutting loose from the offices, and in immersing students in academic halls, there has been a return to the University system, the most ancient of all, and an abandonment of the most characteristic features of all subsequent systems. In pressing the University system forward on the modern lines of thoroughness and isolation from distractions of the workaday world, the University system has been strengthened and vastly improved in efficiency, but none the less through the surrender of the cherished convictions of the older school of lawyers. It was with the purpose of bringing this fact out in all its significance that I spent time upon the foregoing historical review.

Have we gained by the change? In the disappearance of the old-fashioned professor, arguing cases in court in the morning and lecturing from manuscript to his classes in the afternoon, I think that we have gained in the thoroughness, the efficiency, the regularity and punctuality, by which substantive law is now taught. A man with a natural love and aptitude for teaching, willing to sacrifice the prospects of success and pecuniary prizes at the bar far in excess of a professor's salary, because of his love of the work of delving into sources, of digging up and arranging matter, or reducing unwieldy masses, of analyzing cases, of extracting principles, of securing results, a

man who looks to general rules rather than to particular exceptions, who has the gift of clear and precise statement, who can arouse and keep upon the stretch the enthusiasms of his pupils, and who has so far devoted himself to the historical evolution of the law as to know its geography, its latitude and longitude, its coast lines, its deep seas, and its shallows—such a man is a far better teacher and produces far more effective and lasting results than the overtaxed gladiator of the forum could ever hope to be, or ever succeeded in being.

Have we lost by the change? In my judgment, we have lost, to a menacing extent, that which gave *tone* to the profession. We have lost the old-fashioned preceptor, setting an example of deportment, of dignity, of professional morality, through meeting his clients in the presence of his students, or by talking familiarly to them of the standards set by tradition, based upon the conduct of the best and purest in the profession. We have lost the old-fashioned student, who hung upon the preceptor's lips, who copied his papers, who served his notices, who kept his docket, who assisted in the preparation of his briefs, who carried his books to court, and who did generally what the office boy and the stenographer and the library page and tip-staff now do.

There was nothing menial in all these acts. They were the familiar features of a legal apprenticeship, which drew preceptor and pupil together in intimate but unstudied relations, and which furnished opportunities to the pupil of observing how a high-minded practitioner adhered in letter, in spirit, and in conduct to his professional oath to act at all times "with all due fidelity to the court as well as to the client"; how he regarded his calling as intended to promote justice and right wrong, rather than to exercise art and

chicanery for purposes of gain; how he refused to soil his hands with business of a doubtful character, although tempting in its prospects; how he refrained from the tricks of enticing business to his office, and never stooped to underbidding or depreciating his most successful rivals; how he chivalrously declined to enforce purely technical advantages over an adversary who had unwittingly slipped his guard; how he scorned contingent fees, or substantial partnerships in the subject-matter of litigation; how he spurned entreaties to mace by threats of litigation which he knew to be legally groundless; how he guided a failing debtor with a fine respect for the rights of creditors, and never connived at the concealment of assets; how he understood the morality as well as immorality of the statutes of limitation; how he strictly regarded his word; how he was ready to compose differences, instead of fomenting strife; how he was accurate in his knowledge of the clerk's office, and the uses of process; how he was skillful and frank in his correspondence; how he never trifled with his conscience in the preparation of affidavits; how he was scrupulous in the ascertainment of facts, and never delayed a just demand by dilatory tactics; how he treated a court with courtesy without obsequiousness, and an adversary with fairness, but with unflinching firmness; how he sought the truth from witnesses without bullying; how he never misstated the evidence or perverted authority; how he met every situation with candor and courage; and how he rose to heights of indignant denunciation of sham and falsehood; how he was kindly, generous, vigilant, aggressive, and incorruptible—at all times a gentleman, but never ostentatiously conscious of the fact.

These are the qualities that we have lost in our teaching. We have develop-

ed—I do not say overdeveloped—in the teaching of substantive law, but on the side of adjective law in its actual use our methods of teaching are defective. Who can doubt it, who is at all familiar with the bar of to-day in the mass, and the bar of yesterday in the mass? Men are lacking in manners, though not in manner; guilty of improprieties and of bad form, offending, not so much willfully and from lack of principle as from ignorance and lack of instruction. As Mr. Leaming wrote, in his "A Philadelphia Lawyer in the London Courts":

"Any one who has sat on a Bar Committee of Censors, in America, must have been struck by the frequent instances where practitioners have fallen into error from sheer ignorance, due to inexperience or to the fact that they had not been born and bred to the best traditions. This is especially true in these days, when law schools are grinding out members of the bar who have had no real professional preceptors."

Or, as another member of the bar put it in conversation:

"What students need is not so much a knowledge of ethics as practice in ethics, or opportunities to see ethical principles practically applied. Students are incubated, instead of hatched. They now have no natural mother."

What is the remedy? I venture a suggestion—not dogmatically, but with some assurance, born of experience as one educated in an office while attending a law school, as an active practitioner for more than forty years, supplemented by twenty years of teaching office students and ten years of teaching in a professor's chair. It is this:

As we cannot carry the students back to the offices, we should carry, as far as practicable, the offices to them. This can only be done by one engaged in active practice. Let the chairs of practice be vacated by the pure scholars. Do not let them be filled by retired practitioners or those about to retire. We must guard

against atrophy. A man out of practice loses his touch with new remedies and rules. He is too apt to rely on his knowledge of what he once did. The man in practice relies on what he is now doing. Let the chair of practice in each school be filled by an active member of the bar, whose presence in the court room is a familiar presence, and let him teach ethics as he discusses remedies. He will know what he is talking about, and his experience and observation will supply him with practical and actual illustrations. The students will know that he understands what he is talking about. He will be no paper soldier, but a real man of arms.

Let not the scholars be offended. In proportion to their success in teaching substantive law, by an exclusive devotion to study, they have lost their relations to the adjective law. They were able to arraign with justice the old-fashioned preceptor as unfit to teach substantive law in the real sense. They justly laughed at the old professor as but half-baked. In turn, the judges of the courts, the active men at the bar, the men concerned with actual legal warfare, can justly arraign pure scholars as unfit to teach practice and ethics in the real sense. They can trace the history of actions; they can state the theory of actions; they can even furnish the forms of process, but as to an interpretation of them—a living, breathing, translation of them into actual use—they are incapable. They can recite the canons of ethics as they could recite the Ten Commandments, but as to the niceties of occasions in advising clients in the office, in consultations with colleagues, in negotiations with adversaries, in battles in the court room, or in the sheriff's or marshal's rooms—the carte and tierce of legal fencing—they are practically helpless.

The Man Without a Domicile

By K. G. NEUMEIER

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WHAT would you do if you were served on the same day with juror summons by the sheriffs of two different counties? That was the predicament of John Howe. His residence was on the dividing line of two counties, and he was apparently a citizen of either place.

Being a law-abiding man, he had no desire to avoid service; but it was physically impossible to act as juror in two places at one time. To accept either would mean contempt of court in the other jurisdiction, and probably result in his arrest. Very wisely Mr. Howe decided to consult a lawyer. The attorney was evidently perplexed.

"The principle is clearly established," he said, "that a man must have a domicile. He cannot have *more* than one, but he *must* have one legal domicile. Your case, however, presents some difficulties."

Then the counselor dug through some text-books and stumbled upon the case of *Inhabitants of Abington v. Inhabitants of North Bridgewater*, 23 Pick. 170, an old Massachusetts decision.

"Ah, here we have it," he exclaimed much relieved, and read from the case: "'Where a house is located on the line between two towns, if it can be ascertained where the occupant usually sleeps, this would be a preponderating circumstance, and, in the absence of other proof, decisive.'"

"This case also quotes Lord Coke: 'If a man have a house within two leets, he shall be taken to be conversant where his bed is, for in that part of the house he is most conversant, and here conversant

shall be taken to be most conversant.'"
2 Doug. 538.

Mr. Howe listened with amusement and interest. His mind was preoccupied, and his eyes showed that he was concocting some scheme.

When he arrived home an hour later, Mr. Howe surprised his good wife by going upstairs and moving the bed around.

"It's the law; we've got to do it," he replied to her questioning.

Then he wrote to the courts of the two counties, explaining his situation in detail, and asking that officers of the two courts meet him at his home the next evening at 5 o'clock to inform him as to the law in his case.

At the appointed time the sheriffs of the two counties arrived. Apparently the judges of both counties had located the case of *Abington v. North Bridgewater*, for the sheriffs were primed and anxious to display their knowledge.

"The judge says where you sleep is the test," said one of them.

"Yes, that's the law," spoke up the other.

"Very interesting and instructive," commented Howe. "But come up stairs," and he led them up to his bedroom.

"This bedroom," he explained, "is right over the county line. Unfortunately, as you see, the bed is also standing right over the line, and is situated in both counties."

The two sheriffs were much puzzled. Finally a bright idea struck one of them,

and he asked, "What side of the bed do you usually sleep upon?"

"Sir!" exploded Mr. Howe in well-feigned anger. "What right has the law to look into my private affairs! Can the law dictate to me whether I shall lie in the middle, right, or left side of my bed? Last night, for example—and that's what makes me so sleepy to-day—I walked back and forth all night over that confounded line trying to put the baby to sleep. I suppose the law will say I should have stayed in one county; but, gentlemen, it will take more than an injunction to limit the course of my strolls at night. I suggest that you explain the situation to the court, and then come back here to-morrow night at this time. This is a vital problem; I want to know where I live."

Next evening the two sheriffs reappeared.

"Judge Swan," declared the first sheriff, exhibiting a slip of paper, "says the case of *Follweiler v. Lutz*, in 112 Pennsylvania, 107, 2 Atlantic Reporter, 721, holds that the place you vote is the deciding factor, and so he says that's the law."

"But, my dear man, I've only been here a short time, and haven't had a chance to vote. I suppose when election day comes round, I'll have to vote in both counties, unless you gentlemen can decide where I live in the meantime."

"Judge Anderson," the second sheriff broke in, "says that the place where you eat is the place where you live."

"Just what I expected," ejaculated Mr. Howe. "I thought the law would try to pry into my private business again. Come into my dining room." The dining room was directly under the bedroom. On the floor was a white chalk line. The table stood squarely over it.

"That chalk line represents the county line. Here is where I sit; this is my

place at the head of the table. You see I always eat in two counties at a time. Of course, I could sit at the side of the table; but I don't propose to give up my place at the head without a struggle. No; I'm afraid your suggestions are not of much value in solving this case. Better report to the judges again."

The two sheriffs departed—sadder, but not wiser.

"I believe the old boy is laughing at us," said the first.

"Sure; but what's the answer? By gum, who would have thought that a lawyer had to know so much!"

That evening Judge Swan, at dinner, told his son George, who was a student of law at the State University, about the interesting question of law that had arisen, concerning the case of the man with the sliding domicile.

"By Jove!" he exclaimed, as a thought suddenly struck him. "You've done a lot of boasting about that course in legal bibliography at your school. Let's see what *you* can do on this proposition. I have located one case on the question—*Follweiler v. Lutz*. Do you think you can find any others?"

"I can, if there are any, Dad. Come on down to the school library, and I'll show you how it's done. It will only take a few minutes to walk down there, and fewer to show you."

"All right, my boy. They say, 'You can't teach an old dog new tricks;' but this time I'll go on the theory that 'It's never too late to learn.'" So off they went to the University law library.

"Now look at this," said George, pulling down volume 22, Decennial Digest. "As you have found *Follweiler v. Lutz* right on the point, we can use that case as our starting point. This is the second volume of an alphabetical table of all the cases digested in the Century and Decennial Digests; that is, it lists all the cases

reported in America from the very beginning down to September, 1906."

"The devil it does!" exclaimed the old judge.

"Sure; and here on page 1424 of the table is your Follweiler Case."

"In this Table of Cases Digested we find:
"Follweiler, Follweiler, Follweiler,"

sang the judge flippantly; for he knew his "Mikado" well enough to take liberties with it. "Well, what next?"

"Well," continued George, "right after the citation for the case to Pennsylvania Reports, is the citation to the same case in the Atlantic Reporter; and then you see this "17 C Domicile § 4."

"What does that signify?"

"It signifies that the one point decided in that case is digested in volume 17 of the Century Digest, under section 4 of the topic Domicile."

"Does it so?" said the judge. "Let's have a look at 17 Century. Yes, here we are. Here's the Follweiler case—and three others, including that Abington v. North Bridgewater case I forgot to tell you about."

"Pretty neat and simple?" inquired George mildly.

"It is all of that. Do another hand-spring or two. I like your methods," said the judge. And George continued his discourse didactically.

"The classification in the Decennial is almost the same as in the Century, but not exactly. To find the Decennial section that covers the same kind of cases as 'Domicile § 4' in the Decennial, we turn to these pink sheets," and George opened to page A 77 of the pink pages at the front of 21 Decennial.

"Here we are under 'Domicile.' Section 4 in the Century corresponds to section 6 in the Decennial. Now, let's take a look at the 'Domicile § 6' in the Decennial."

"That gives us one more case," the

judge announced joyously, when they had opened the proper section in 7 Decennial, "and brings our search down through 1906. Can we get cases later than that?"

"Of course—in the several volumes of the Key-Number Series. That's the series of digests that supplement the Decennial. They have exactly the same classification as the Decennial, so all we have to do is to look for 'Domicile' in each volume, and if there are any cases on our point they will surely be under 'Domicile § 6.' And, by Jupiter," George exclaimed, as he opened volume 2 Key-Number Series to that section, "here we are!"

"Look at this case in volume 2—East Montpelier v. City of Barre, 66 Atlantic Reporter, 100. I'll read you some extracts from it: 'Where a line dividing a city from a town passed diagonally through a residence, so that about six-sevenths of the residence was in the town, the inhabitant was a resident of the town and not of the city. * * * The location of the house could not gain the occupant a residence in both towns, and is not to be so treated as to leave him without a residence in either. As a place of residence the building cannot be divided between the two towns, and must be held to be in one or the other.'

"There now, Father, if that domiciliary home residence of Howe isn't divided diametrically in two by that line, this case solves the question."

The judge regarded his son with much approval—a sentiment shared by the complacent, but efficient, George.

"Good work, George. You are O. K. So is the American Digest System." Then, after a moment of thoughtful contemplation, he asked abruptly: "But suppose we hadn't had the Follweiler Case to start with; what then?"

George grinned cheerfully. "That's a

different row to hoe, but it's just as easy. Where you haven't a case in point to start with, you use this book in the black binding. It's an index to every section in the Decennial, and so to the different volumes of the Key-Number Series also, because they have the same uniform section numbers." He reached for the Descriptive-Word Index.

"What's our question? What constitutes a fellow's domicile?"

"No," the judge said; "it's the question of where a man's domicile is located."

"Well," said George, "as it involves his domicile, let's look in the index for 'Domicile.' Here it is." He turned to "Domicile" in the Index, and pointed to the line, "Place of residence situated partly in different jurisdictions, Domicile 6."

"You will note, Father, that this leads us to the same topic and section (Domicile § 6) in the Digest System where we found all the cases in point. *Now* what do you think of the Key-Number System!"

The next day, armed with the case of *East Montpelier v. City of Barre*, the sheriff from Judge Swan's district went up to the Howe residence. Cautiously and solemnly he examined the grounds. Then he noted that in his county there was the living room of the house with a big bay window. With a smile of satisfaction he entered.

"Well, I've got you, Mr. Howe. Read this case of *East Montpelier v. City of Barre*. You see that living room with the bay window clearly places the biggest part of your house in my jurisdiction. I guess you'll have to answer that jury summons now."

Mr. Howe read the case and admitted good-naturedly that his problem had been solved.

"It's a relief anyway," he laughed, "to know where I live; but who would have supposed that a bay window would determine my jurisdiction."

"A 'bay window' is often a big factor; I know mine is;" and the "bay window" of the big rotund sheriff shook with laughter.

Editorial Note

THE 1914 Fall Number of this journal contains a short story entitled "What's Wrong With The Law," written by Arthur M. Harris (author of "Letters to a Young Lawyer," etc.), in which one of the characters is that of a Russian Jew by the name of Ignatz Balletski, who is represented as the proprietor and manager of the "Universal Collection and Adjustment Company." A number of readers of this Journal

have protested against this story, alleging that it constitutes a gratuitous caricature of the Jew without reason or justification. The Editor regrets the occasion which has made these criticisms possible, and takes this opportunity to state that in publishing the story no offense was intended, and that nothing was more remote from his mind than to pander to racial prejudice.

The Relation of Preliminary Education and Age to Scholarship in George Washington University Law School

THE student body of the George Washington University Law School affords an unusual opportunity to study the relation of preliminary education and age to scholarship of students. The admission requirement for regular students has been a four years high school course, but over one-third are college graduates, and nearly another third have had a year or more of college work. Their ages range all the way from eighteen to forty years, the average age of the whole student body being over twenty-six years. For these reasons the following table may be of interest.

The table is the result of an investigation of the records of 261 students for the academic year 1913-14. Efforts were made to get a group uniform in all

but preliminary education and age. The group is of candidates for the LL. B. degree only, and from it were excluded those candidates whose courses were irregular.

The table shows the record of (1) the whole group; (2) divisions of the group according to preliminary education; (3) divisions according to age; (4) subdivisions according to preliminary education and age. The numbers in a few of the subdivisions are too small to make the results trustworthy, but taken together they lead to certain conclusions.

The table raises at least one interesting question, viz., how far maturity through age compensates for the lack of high preliminary education.

Classified by	Number	Average semester hours carried	Passed in all, or conditioned or failed in one or more subjects						Number and percentages making average grade of								Average mark of class
			Passed		Conditioned		Failed		A (85 to 100)		B (80 to 84)		C (65 to 79)		D (60 to 64)		
			No.	Per ct.	No.	Per ct.	No.	Per ct.	No.	Per ct.	No.	Per ct.	No.	Per ct.	No.	Per ct.	
1. Candidates for LL. B.....	261	21.7	167	63.9	25	9.5	69	26.4	25	9.5	35	13.4	158	60.5	21	8.0	73.08
2. Preliminary Education—																	
College Graduates.....	94	21.5	71	75.5	5	5.3	18	19.1	18	19.1	20	21.2	48	51.0	4	4.2	76.4
College Undergraduates....	70	21.6	42	60.0	6	8.5	22	31.4	5	7.1	9	12.8	41	58.5	7	10.0	71.7
High School Graduates....	97	22.2	54	55.6	14	14.4	29	29.9	2	2.0	6	6.1	70	71.1	10	10.3	70.7
3. Age—																	
30 years and over.....	30	20.5	18	60.0	5	16.6	7	23.0	3	10.0	3	10.0	20	66.6	2	6.6	73.2
25 years to 29 years.....	71	20.7	53	74.6	3	4.2	15	21.1	8	11.2	14	19.7	40	56.3	5	7.0	74.6
21 years to 24 years.....	118	22.3	75	63.5	10	8.4	33	27.9	14	11.8	16	13.5	70	59.3	8	6.7	72.5
18 years to 20 years.....	42	22.5	21	50.0	7	16.6	14	33.3			2	4.7	28	66.6	6	14.2	68.9
4. a. 30 years and over—																	
College Graduates.....	13	21.1	10	76.9	2	15.3	1	7.6	3	23.0	2	15.3	7	53.8			77.1
College Undergraduates....	8	18.5	5	62.5	1	12.5	2	25.0					7	87.5	1	12.5	69.1
High School Graduates....	9	21.2	3	33.3	2	22.2	4	44.4			1	11.1	6	66.7	1	11.1	71.2
b. 25 years to 29 years—																	
College Graduates.....	38	20.5	28	73.6	1	2.6	9	23.6	5	13.1	9	23.6	18	47.3	4	10.5	75.2
College Undergraduates...	13	18.8	10	76.9			3	23.0	1	7.6	3	23.0	7	53.8			73.9
High School Graduates....	20	22.4	15	75.0	2	10.0	3	15.0	2	10.0	2	10.0	15	75.0	1	0.05	73.8
c. 21 years to 24 years—																	
College Graduates.....	43	22.4	33	76.7	2	4.6	8	18.6	10	23.2	9	20.9	23	53.4			77.3
College Undergraduates...	35	22.5	20	57.1	2	5.7	13	37.1	4	11.4	4	11.4	18	51.4	4	11.4	71.9
High School Graduates....	40	21.9	22	55.0	6	15.0	12	30.0			3	7.5	29	72.5	4	10.0	70.9
d. 18 years to 20 years—																	
College Graduates.....	0																
College Undergraduates...	14	23.4	7	50.0	3	21.4	4	28.5			2	14.2	9	64.2	2	14.2	70.3
High School Graduates....	28	22.1	14	50.0	4	14.2	10	35.7					19	67.3	4	14.2	68.2

[The following argument by Mr. Hoshour won first prize in a contest in the spring of 1914, open to students in the various law schools in Minnesota for the best essay on the Judicial Recall. This contest was instituted by Mr. Rome G. Brown, of Minneapolis, who is the chairman of the American Bar Association Committee to Oppose Judicial Recall.]

WE WHO live in Minnesota believe in a government that places the power in the people; and we believe that this power should be just as close to the people, in every case, as is practicable and expedient. It is not by chance that Minnesota laws are among the most progressive in America; it is not by chance that such measures as the election of Senators by popular vote, woman suffrage, and the initiative and referendum have made great forward movements here; nor is it by chance that Minnesota is the first state, having any of its territory east of the Mississippi, to vote on the recall of public officials.

That popular government is so securely established in Minnesota, is due— if to one thing more than another—to the prevalence throughout the state of discussion concerning questions of public interest. In the hope of helping in some measure in the discussion of the recall, now at issue, this article is written.

The writer's position on the recall is summarily stated by President Wilson:

The recall is a means of administrative control. If properly regulated and devised, it is a means of restoring to administrative officials, what the initiative and referendum restore to legislators, namely, a sense of direct responsibility to the people who chose them. The recall of judges is another matter. Judges are not lawmakers. They are not administrators. Their duty is not to determine what the law shall be, but to determine what the law is. Their independence, their sense of dignity and of freedom is of

first consequence to the stability of the state. To apply to them the principle of the recall is to set up the idea that the determinations of what the law is must respond to popular impulse and to popular judgment. It is sufficient that the people should have the power to change the law when they will. It is not necessary that they should directly influence by threat of recall those who merely interpret the law already established.

The argument, therefore, will be confined to the recall of judges, all of whom are included in the provisions of the proposed amendment. It is unfortunate that administrative and judicial officers are included together; but if the people of Minnesota want a recall of legislative and executive officers, such a measure can be proposed and voted on at another time. As the question will be presented at this election, every one who is opposed to the recall of judges, to make his vote effective, must vote "no" on the proposed amendment.

The question naturally resolves itself into main issues. The first of these is: Is the recall in line with our past policy? The second: If it is not so in line, is such a change desirable? The second of these issues is the more important to the believer in popular government, though the first is by no means negligible in its effect on the decision of the thoughtful citizen.

The second division of the question raises such component issues as: (1) Is the recall fair to the judges, in view of their duties and position? (2) What

effect will the recall have on the stability and effectiveness of the law? (3) What effect will it have on the public rights? (4) Will the recall of our judges remedy existing defects in our law and courts? (5) Has the proposed plan worked well in other places? (6) What is the opinion of fair-minded and able observers on the question? I shall consider the issues raised by these questions in the order given, stating them positively rather than in the interrogative form.

The Recall of Judges is Not in Line with Our Past History

That the recall of judges is not in line with our past policy as a state and nation seems self-evident. Since the Constitution was adopted, it has been our policy to keep the judiciary independent of every external force, whether that force be popular will or executive control. The chief argument brought forward by the advocates of the recall is that it will make the courts responsive to the people's wishes. That this is a decisive change in our past policy is indisputable, nor is the contrary argued by the proponents of the recall.

The issue then arises: Is such a change desirable? No thinking American will scoff at the wisdom of the men who formed our Constitution, that document characterized by Gladstone as "the most wonderful work ever struck off at a given time by the brain and purpose of man"; but, on the other hand, he will not accept any theory or practice of government, as applied to our conditions today, simply because our fathers thought it best. He will consider all the facts, weighing heavily the opinions of those who formed our Constitution, in that it has stood the test of years. The words of Abraham Lincoln are applicable here:

I do not mean to say that we are bound to follow implicitly in whatever our fathers did. To do so would be to discard all the

lights of current experience—to reject all progress, all improvement. What I do say is that if we would supplant the opinion and policy of our fathers in any case, we should do so upon evidence so conclusive and argument so clear, that even their great authority, fairly considered and weighed, cannot stand.

The burden of proof rests then upon those who propose the recall.

The Recall is Unfair

Fairness is a thing on which we as Americans pride ourselves. To consider any question from the standpoint of those most affected is essentially American, and, to the thinking man, it is fundamentally essential.

The recall, as stated in the proposed amendment, does not give the judge a fair trial. In any important case the evidence and rulings of the court, upon which a recall could be based, will cover a number of volumes, and frequently intricate questions of law and fact will be involved. How can the voter determine, from a 200-word charge and a 200-word defense, whether or not the issues in such a case were correctly decided, and make that determination fair to the judge? How can the voter decide fairly whether or not the court rightly interpreted the law, when the case may involve a hundred points and the authorities on which the decision rests may run back a hundred years?

The question cannot be whether or not the law is wrong—over that the judge has no possible control—but only whether there was a correct interpretation of the existing law. Obviously it is unfair to take the newspaper reports of the case or what political speakers may say. A fair decision in the case of a recall of a judge should involve a study of how learned and unprejudiced judges have interpreted the same or similar laws in the past, in this and other jurisdictions. How can all this be included in 200 words, so as to be fair to the judges?

all those as jurors who have even a remote interest in the litigation; but, under the proposed system, the judge is to be tried by a jury, 20 per cent. of whom have gone on record as being opposed to him, by signing the recall petition, and that, too, without having heard the judge's side of the question. Is this fair to the judge? Are not our judges—even when they are on trial—to be given as fair a chance as the criminals who come before them?

It is axiomatic that the civilization of a nation increases in direct proportion as the people of that nation have effective laws. A government without such laws is but a form of anarchy. It is not the duty of the court to make the laws, but only to interpret and declare them, and to make that declaration uniform in like cases, thus giving the laws stability and effectiveness. It requires no evidence to prove that a law applied differently in every case will have no stability nor efficiency; indeed it will not be a law at all. If the judge is subject to a recall, he cannot help but think more of what the people will think of his decision than of the efficiency of the law. This will tend to bring about a different rule in every case; litigation will be increased, in that many suits will be started, which, if the law were settled, would never have been brought. The law will tend to become unstable, unsettled and ineffective.

The Recall Will Have a Bad Effect on the Public

Edmund Burke said:

The poorest being that crawls on earth contending to save itself from injustice and oppression is an object respectable in the eyes of God and man.

the power of any force to alter. If the proponent of the recall of judges wants an unanswerable reason why the judiciary must be independent, if the rights of the people are to be preserved, let him think of the application of the above quotation to the plan he is advocating.

If the courts are not wholly independent, who is to protect the man who is contending for his rights against heavy odds? If an individual is suing, in a case where the supposed desires of the majority of the people are opposed to him, how can he get a fair trial? This squarely raises the question: Can a man have any rights, which a majority of those who vote at a recall election, think he should not have? That, indeed, is the crux of the whole situation. The man who believes that there can be no such rights—and only he—can consistently vote for the recall of judges.

Under our Constitution there are some things that no majority, however great, can change. Such are the right to the writ of habeas corpus, the prohibition against the passing of ex post facto laws, the right to be secure in life, liberty and property, and many other rights known to every American. To make the question personal and concrete, are you willing that your property rights, your liberty, your life, should be at the will of the majority of those who vote at a special election? In every case, on which a recall could be based, some one's rights—frequently some one's life—are at issue. The courts alone can protect these rights. If you make them dependent on a popular majority, then the rights that our fathers fought to attain are lessened and potentially gone, as the majority changes.

The words of Senator Root are ap-

plicable here. The recall of judges, he says,

abandons absolutely the conception of a justice that is above majorities, of a right in the weak which the strong are bound to respect. It denies the vital truth taught by religion, and realized in the hard experience of mankind, and which has inspired every constitution America has produced, and every great declaration for human freedom since Magna Charta—the truth that human nature needs to distrust its own impulses and passions, and to establish for its own control the restraining and guiding influences of declared principles of action.

In Minnesota there is little charge of corruption in the courts; our Supreme Court is said to be the most progressive state tribunal in America; the judges of our lesser courts are men of eminence and dignity in every community. This raises the question: Why a recall with its incident dangers? But, granting that there is corruption in our courts, such corruption will not be remedied by the proposed system.

In the first place, if the people elect a corrupt and inefficient judge, the same people will vote at the recall, and again when a successor is elected. If the people are incapable of electing a fair judge, it is unreasonable to think that the same people will be able to vote rationally at a recall election, where the issues are sure to be much more involved. The same methods will apply in each election; the same parties will control and the same bosses who put the corrupt judge in office will replace him with another quite as corrupt and even more cringing to the will of his masters.

If the judge becomes corrupt after his election no recall is needed, for we already have the remedy of impeachment. If impeachment is not workable now, its plan and form can and should be changed, so as to make it more easy of application. The difference between the recall and impeachment is, that in the latter case the judge is tried in accord-

ance with the rules of evidence, and by those who have an opportunity fully to investigate the charges; whereas in the recall, the judge is tried by those who in the nature of the case cannot have had a chance to learn all the facts, and by a group 20 per cent. of whom are avowedly his opponents. In impeachment, the judge is given the sort of a trial that a criminal gets under our law, no more, no less. Regardless of fairness to the judges, which is the more effective to remove the really corrupt and inefficient judge?

Nor would the recall remedy the delay and technicality that exist in our law to-day. No particular judge is or can be responsible for these things, and the recall of any judge for such reasons will not change them one whit. If there is too much delay, our procedure should be changed; if there is too much technicality, less technical laws should be made, not by the judges—who have no such power—but by the legislature.

The Recall Has Failed Where It Has Been Tried

The idea of a recall of judges is no new thing. The judges of Babylon, four thousand years ago, were subject to a recall by the king; in ancient Greece, the people had the power of recall; in England, prior to the Act of Settlement, the king had such a power; in France, during the Revolution there, such power was in the people. Every student of history knows the result in these cases. Babylon is of interest only to show what government should not be; the pure democracy of ancient Greece caused its downfall; the system in England produced a Jeffreys, made possible the Bloody Assizes, and cost a king his crown; and in France the Reign of Terror was the result.

In America, the recall was part of the

Articles of Confederation, and on the failure of the government under those articles, the recall was omitted from the new plan of government, though not without some opposition.

Since 1908, Oregon, California, Arizona, Colorado, and Nevada have adopted the judicial recall. Three things are significant in a study of the recall in these states:

(1) It has introduced bad practices in procuring names for the recall petitions.

(2) The recall elections have failed to interest a representative portion of the people.

(3) It has introduced party politics into the question.

I shall consider these three points briefly.

(1) Allen H. Eaton, in his book, "The Oregon System," says that the attempted recall of Judge Coke, in Oregon, failed because of the lack of funds to procure enough signatures to the petition. Fred W. Catlett, in the *Annals of the American Academy*, says:

As it actually worked, petitions are placed in the hands of many irresponsible persons, who indiscriminately solicit signatures on the streets and in the office buildings, ignorant in the great majority of cases, not only of the voting qualifications of the signer, but also of the genuineness of the name and signature.

(2) When Judge Weller was recalled in California, a case where the enthusiasm was at white heat, the total vote was less than 50 per cent. of the qualified list of voters, and he was recalled by a vote of less than one-fourth of the qualified voters. This means one of two things; the voters were not interested in the question, or they failed to vote because they found it impossible to make a rational decision.

(3) Mr. Gilbertson, a secretary of the New York Short Ballot League, says, in the *Annals of the American Academy*,

that politics have been the leading issue in every case of the recall that has been tried.

An Instrument of Socialism

The Socialist party has already incorporated the recall of judges into its national platform. In the words of Mr. Debs' paper, *The Appeal to Reason*, it is "the means whereby the people will be enabled to inaugurate Socialism." The same publication, before the notorious McNamara trial, said:

Under the provisions of the recall amendment, the judges of the Supreme Court of California can be retired. These are men who will decide the fate of the kidnapped workers. Don't you see what it means, comrades, to have in the hands of an intelligent, militant working class, the political power to recall the present capitalist judges, and put on the bench our own men? Was there ever such an opportunity for effective work? No; not since Socialism first raised its crimson banner on the shores of Morgan's country.

A news item, taken from the *Duluth Labor World* of August 8th last, illustrates the same point:

The Socialists' local here has called to its aid the entire Socialist party of the state and nation. The first to respond is the *Appeal to Reason*, with its over one-half million circulation, pledging itself without reserve to continue in the recall fight, until Judge McHendrie is swept from the bench and Bob Ulich freed from jail. A special representative of the *Appeal* is now in Trinidad.

That these things should arise was inevitable; that they have come up is but proof of the correctness of my thesis. Are we, in Minnesota, willing that such methods of soliciting be introduced? Are we willing that our judges should be recalled by one-fourth of the voters? Are we willing to have the Socialists, or any other political party, make the recall of our judges a national issue? Are we willing that political papers in other states should pledge themselves to sweep our judges from the bench?

casts his vote in favor of this measure must answer each of these questions in the affirmative.

*The Opinions of Competent Observers
are Opposed to the Recall of
Judges*

Opinions on such a question are only of value when those who give them have had experience in governmental matters. So far as I have been able to find, no man of national prominence has come out squarely in favor of the recall of judges. I have already referred to the opinion of Woodrow Wilson, the great leader of the majority party, as well as to Senator Root, the leading figure of the minority party. Mr. Borah, the famous progressive Senator from Idaho, says:

"It is my deliberate and uncompromising opinion that without a free, untrammelled, independent judiciary, popular government, the

Space will allow the quoting of but one other man, the venerable Archbishop Ireland of Minnesota:

"No greater peril to the institutions of democracy, to the permanency of social order, could well be imagined, than the legalizing of the recall of the judiciary."

Conclusion

The conclusion of the matter may be stated briefly: (1) The recall of judges is a radical change in our past policy. (2) Such a change is not desirable: (a) Because it is unfair to the judges; (b) because it will make our laws ineffective; (c) because it will have a devastating effect on the rights of the people; (d) because it cannot remedy any existing defects; (e) because it has failed where it has been tried; (f) because the opinion of capable and experienced observers is opposed to the recall of judges.

The College of Law, University of the Philippines

By GEORGE A. MALCOLM

Dean of the College of Law of the University of the Philippines

THERE is, in the Philippine Islands, a unique legal system, in which the two great streams of the law, the civil, the legacy of Rome to Spain, coming from the West, and the common, the inheritance of the United States from Great Britain, amplified by American written law, coming from the East, have met and blended.¹ On the substantive law of Spain in force in the Philippines

on American occupation, the new régime has grafted simplified code procedure, the Torrens system, a negotiable instruments law, American public and private corporation law, and similar statutes. The present government has, moreover, been guided by the express injunction of President McKinley, in his instructions to the Philippine Commission, that:

"It is especially important to the prosperity of the Islands that a common medium of communication may be established, and it is obviously desirable that this medium should be the English language."

¹ See Lobingier in Review of Reviews for September, 1905, and Abreu, in Philippine Law Review for May, 1914.

The legislative body carried forward the same idea by providing for English eventually to be the official language of the courts.² The courts, in interpreting and applying the law, have, consequently, in one opinion gone to the jurisprudence of Spain for authority, and have, in the next, applied the rules of the English and American common law.³

The complement of such a system of jurisprudence is obviously a school where students are trained, in the future official language, for the practice of law in the Philippine Islands. Experience shows that students have, at great expense, been sent to American universities, and have there acquired an excellent knowledge of the English language, and studied conscientiously the principles of American law, only, on a return to the Philippines, to find themselves hopelessly at sea in the Spanish law. Other students have pursued a course of legal study in the universities of Spain or France, or in schools in the Philippines in which, in the Spanish language, the Spanish codes are studied directly, only to come forth unacquainted with the future official language of the courts where they are to practice, and unfamiliar with American adjective or substantive law, or cases. In both instances the method was wrong—the student was overdeveloped in one direction and underdeveloped in another.

The first indication that the government was cognizant of such conditions came with the institution in the Philippine Normal School (afterwards carried on in the Junior College of Liberal Arts) of a preparatory law course. Act 1627 of the Philippine Commission, the Justice of the Peace Law, gave legislative

sanction to the idea when it was provided, in section 1 thereof, that:

“The Director of Education shall certify to the Governor General the names of all persons, otherwise qualified, who shall have completed the course for magistrates at the Philippine Normal School or University, and have expressed their willingness to serve as justices.”

But, having prepared students to study law, the government was apparently unable to provide the means for legal study for the students thus prepared. These students, on graduating in this course, were not fitted to take up a profession other than law without further study; they had not the means to attend American universities; they had not the knowledge of Spanish which would permit them to matriculate in the law schools of Manila. The situation of these bright young Filipinos, brought to the attention of the writer by them, appealed to his sympathy. Having found that the Secretary of Public Instruction did not favor the establishment of a College of Law in the University of the Philippines at that time, through the interest of the Educational Department Committee of the Young Men's Christian Association, the Association was persuaded to give law courses, open to both Americans and Filipinos. Under the heading of “Aim and Purpose” in its announcement of the educational courses, it was said:

“Preparatory courses in law are offered at present in the Junior College of Liberal Arts. English is to be made the official language of the courts in 1913. There is no school in the Philippines where either Filipinos or Americans can study law in English. To fill this need as well as possible is the desire of the Young Men's Christian Association in giving these law courses. Their purpose is twofold: First, to train Americans and Filipinos who are properly qualified for the Philippine Bar Examination; second, to meet the needs of business men, civil service employes, etc., who desire to pursue certain legal studies without intending to practice law.”

The law courses received unlooked for assistance from the beginning. A circu-

² Act 190, § 12; Act 1123, § 1; Act 1427, § 1; Act 1946, § 1; Act 2239, § 1.

³ Opinion of Attorney General Araneta, 4 Op. Atty. Gen. 510; opinion of Mr. Justice Carson, in U. S. v. Cuna, 12 Phil. 241.

lar was sent to the members of the Manila Bar and Judiciary, and without exception, every one responding favored the proposed plan. A tentative course of study, inclosed for their study, was, however, criticized, and from these suggestions and from a perusal of the catalogues of leading colleges of law, the writer, with the assistance of Judge Hurd, of the Court of First Instance, was enabled to draft a course of study. It was thought that it would be difficult to secure quarters for the classes, but through the courtesy of the Director of Education, the Superintendent of the City Schools, and the Municipal Board, a room in the Manila High School was made available without expense; a study room containing a small library was afterwards equipped in another quarter.

It was thought that to obtain a faculty, not alone of lawyers, but of lawyers with experience in teaching, or with the proper temperament, would be impossible, but it proved the contrary. Hon. Charles B. Elliott, formerly Judge of the District Court of Minnesota, Justice of the Supreme Court of Minnesota, and Justice of the Supreme Court of the Philippine Islands, and then Secretary of Commerce and Police, the author of standard text-books on Insurance, Municipal Corporations and Private Corporations, and for many years a professor in the University of Minnesota, gave his enthusiastic support to the law courses, not only accepting the deanship, but teaching a course himself. The writer was made secretary, and gave two subjects. Other members of the faculty were Mr. Justice Johnson, of the Supreme Court, author of excellent text-books on Negotiable Instruments and Code Pleading, formerly secretary of the Department of Law in the University of Michigan, and for thirteen years a professor therein; Judge Lobingier, of the Court of First In-

stance, author of books on Philippine Practice and the People's Law, and of the oft-cited article on constitutional law in the American & English Encyclopedia of Law, and formerly a member of the Supreme Court of Nebraska and of the faculty of the University of Nebraska; Mr. Clyde A. De Witt, of the Manila Bar, who had taught a number of years in the Philippines; Mr. W. L. Wright, of the Manila Bar, to teach public speaking, having been instructor in the same subject at Valparaiso University; Professor Fansler, of the University of the Philippines, to teach argumentation, a course similar to those given by him in the College of Liberal Arts; Judge A. S. Crossfield, of the Court of First Instance, who from his varied experience was picked as the best man for the most fundamental of all law subjects, Contracts; Solicitor General Harvey, with practical experience in criminal law, corporation law, etc., and most studious and conscientious in his work; and Judge Goldsborough, of the Code Committee, who at the time was investigating the very subject he was to teach.

It was not expected that there would be over fifteen students, but not withstanding there had been no opportunity for public announcement and the school was in the nature of an experiment, fifty well-qualified students presented themselves for the opening exercises on July 1, 1910. With such enthusiastic support from the Bar, the faculty, the students, and the Young Men's Christian Association, the courses could not help but be an unqualified success.

The Board of Regents provided for the establishment of a College of Law in the University of the Philippines, on January 12, 1911. The Young Men's Christian Association thereupon, pursuant to its previously announced policy, and upon the recommendation of the

Dean and Secretary of the Law Courses, decided to discontinue the same at the end of the scheduled school year.

The College of Law, University of the Philippines, was organized with Hon. Sherman Moreland, Justice of the Supreme Court, and generally acknowledged to be one of the most brilliant lawyers and jurists in the Philippines, as Acting Dean, and the writer as Secretary. A number of prominent lawyers were added to the faculty. The building located at No. 68 Calle Isaac Peral, was rented for the use of the College. Two classes, the freshman, with 125 students, and the second year, including those students coming from the Young Men's Christian Association Law Courses, were enrolled and began work on July 5, 1911.

During the three years which have since elapsed the work of organization has been completed. The College now occupies the commodious University Hall jointly with the College of Liberal Arts. It has therein offices for its faculty, classrooms, a well-equipped courtroom, and a working law library containing close to fifteen hundred volumes.

The faculty is divided into three classes: 1. The permanent faculty, devoting all their time to the school, composed of two Professors of Law (Professor Conant and the writer), an Assistant Professor of Law (Mr. Bocobo), and two instructors in law (Messrs. Hilado and Espiritu). 2. Members of the Manila Bar and Judiciary giving subjects for which specially qualified, consisting of Judge Lobingier of the United States Consular Court at Shanghai, Justice Carson of the Supreme Court, Judge Harvey of the Court of First Instance, Judge Goldsborough of the Code Committee, Commissioner De Witt of the Board of Public Utility Commissioners, Prosecuting Attorney Paredes, Judge Abreu of the Court of First Instance, and Messrs. Vil-

larel and Santos of the Bureau of Justice. 3. Special lecturers on narrow topics, numbering Judge Crossfield of the Manila Bar, Executive Secretary Villamor, Mr. Del Pan of the Code Committee, Mr. Ortigas, the Chairman of the Code Committee, Judge Ingersoll of the Manila Bar, Judge Sumulong of the Manila Bar, City Attorney Escaler, and Dr. Newberne of the Bureau of Health.

The faculty, which, as originally constituted under the Y. M. C. A., was necessarily composed of Americans exclusively has since changed, so that now it is made up of nine Americans and twelve Filipinos. Through the writer it is in close touch with the President of the University and the Committee on Law of the Board of Regents, Commissioner Palma, Justice Johnson, and Mr. Escaler. These officials have always taken an exceptional interest in the welfare of the college.

The student body numbers one hundred and fifty. There are also about eighty in the preparatory law course, which, with the admission of graduates of the Ateneo de Manila and Silliman Institute, would indicate that even with high entrance requirements of two years of college work, and strict and thorough legal instruction, attendance is bound to increase. Were the entrance requirements lowered, so as to admit high school graduates, there is no doubt that over one thousand would enroll; but it is not our desire to compete with private schools or to draw from the other professions. The student council, composed of the heads of the different organizations and a representative from each class and the college alumni, controls student enterprises. The loyalty, spirit, and sacrifices of our students cannot be commended too highly.

The courses of instruction are so arranged that, upon completion of a two-

year preparatory college course, the student receives three or four years of *practical and thorough instruction for the practice of law in the Philippine Islands*. These courses follow the American law school method as to logical sequence—e. g., Contracts coming in the first year, and other subjects, as Agency, dependent and ancillary thereto, later. They follow the Spanish law school method, in that the law in force in the Philippines and the cases construing the same, are studied—e. g., in Civil Procedure, a study of Act 190 of the Philippine Commission, preparing the student for Philippine practice.

Text-books and syllabi are used where possible in the freshman year, when the student, verdant in the law, is totally unacquainted with cases, how to find them, and how to study them properly when found. The case system, with outlines, is used thereafter, where feasible. But always the portion of the written law of the Philippines which is included within the scope of the subject, and the leading opinions of the United States Supreme Court, or of the Supreme Court of the Philippine Islands, construing the same, are thoroughly covered.

Emphasis is placed on such practical subjects as moot court work, and conveyancing; not only is it believed that students should understand the principles of code pleading, but they should *know how* to institute and conduct a case through all its stages; not only should students be familiar with the essential requirements for a good contract, will, mortgage, partnership agreement, etc., but they should *know how* to draft such documents.

A thesis amounting to a contribution to legal knowledge is made a prerequisite to graduation. Prizes for scholarship and for the winners of college contests are awarded during each academic year.

With the institution of a newly established Law Journal, and next year of a post graduate review course and a free legal dispensary in connection with the work of the Public Welfare Committee, with action on our application for membership in the Association of American Law Schools, with the organization of the alumni association, and with legal research work begun by members of the faculty, the plans and hopes of the writer will have been realized. We have next to organize and develop a School of Finance and Business Administration in connection with this College.

The stock objection to a government law school in the Philippines was and is:

"There are too many lawyers and politicians in the Philippines."

In a measure, the statement is correct. The Philippines do not need so-called lawyers, who are only able to fulfill Aaron Burr's ironical definition of Law:

"Whatever is boldly asserted and plausibly maintained."⁴

The Islands do not require politicians who believe with the cynical Voltaire that:

"The art of government is to compel two-thirds of the people to pay all they can to support the other one-third."

Even the description of a jurisconsult, by Cicero, is not sufficient:

"Skilled in the laws, and in the usages current among private citizens, and in giving opinions and bringing actions and guiding his clients aright."⁵

What is needed is, not a greater quantity, but a finer quality, of men, who, thoroughly grounded in a general education, have builded thereon an understandable comprehension of the existing

⁴ Magruder, *Life of Marshall*, page 203.

⁵ Quoted in the *Yale Law Journal* for November, 1911, page 72.

law and institutions of the Philippines, and who, upon graduation, can practice law in the official language and take a leading, progressive part in good government. The College of Law will fail in its duty just so far as, through overkind-heartedness or laxity, the road to the practice of law or to a place in public life is made easy.

The school cannot hope to accomplish its plans, or to assume its proper place, by merely striking the rock and expecting there to burst forth a complete college, but, varying the figure of speech, as was said in the Talmud:

"The foolish man says: 'It is impossible that I should be able to remove this immense heap. I will not attempt it.' But the wise man says: 'I will remove a little to-day, some more to-morrow, and more the day after, and thus in time I shall have removed it all.'"

* Quoted in 219 U. S. page xv.

Said Alexander Hamilton, quoting from Hume, to show that a perfect constitution is not possible:

"The judgment of many must unite in the work; experience must guide their labors; time must bring it to perfection, and the feeling of inconvenience must correct the mistakes which they inevitably fall into in their first trial and experiment."

The idea thus so appropriately stated by this eminent statesman is just as true in its application to the College of Law. It can, however, even now, have as its ideal that which President Bartlett so aptly phrased in his inaugural address as "efficiency." The College of Law, University of the Philippines, can, under any circumstances, and at all times, aim at being primarily a college of law of the Philippines Islands, for the Filipinos and other residents of the Islands, and eventually, particularly as students are graduated and gain experience, by the Filipinos.

Admission to the Bar—Reasonableness of Educational Requirement

THE following decision is reprinted from 107 Northeastern Reporter, 1007:

In re BERGERON.

(Supreme Judicial Court of Massachusetts.
March 4, 1915.)

1. ATTORNEY AND CLIENT (§ 1*)—ADMISSION—RULES AND STATUTES.

Rule 7 of the Board of Bar Examiners, relative to general education, effective February 2, 1914, was not repealed by St. 1914, c. 670, § 1, effective September 1, 1914, amending Rev. Laws, c. 165, § 40, authorizing the Board of Bar Examiners, subject to the approval of the Supreme Judicial Court, to make rules, as to qualifications of applicants for admission to the bar, by adding the proviso that he "shall not be required to be a graduate of any high school, college or university."

[Ed. Note.—For other cases, see Attorney and Client, Cent. Dig. § 2; Dec. Dig. § 1.*]

2. STATUTES (§ 181*)—CONSTRUCTION—MEANING OF WORDS.

Statutes are to be interpreted so as to give effect to their manifest purpose, as ascertained

from the words used, given their common and approved meaning, and no intent can be read into a statute which is not there either in plain words or fair implication.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. §§ 259, 263; Dec. Dig. § 181.*]

3. ATTORNEY AND CLIENT (§ 14*) — PUBLIC CHARACTER OF OFFICE — 'ATTORNEY AT LAW.'

An "attorney at law" is in a sense an officer of state under oath binding him to the highest fidelity to the court as well as to his client, and sustains an obligation to the public no less significant than that to his clients.

[Ed. Note.—For other cases, see Attorney and Client, Cent. Dig. § 21; Dec. Dig. § 14.*]

For other definitions, see Words and Phrases, First and Second Series, Attorney at Law.]

4. ATTORNEY AND CLIENT (§ 4*)—ADMISSION—REASONABLENESS OF EDUCATIONAL REQUIREMENT.

A rule of the Board of Bar Examiners, approved by the Supreme Judicial Court, requiring an applicant for examination to certify that he is a graduate of a college or a day high school, or school of equal grade, or has passed the entrance examination of a college or of the

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key-No. Series & Rep'r Indexer

college entrance examination board, or equivalent examinations, or has complied with the entrance requirements of a college, or has passed the examination for entrance to the Massachusetts state normal schools in English grammar and literature, in United States history, covering the history and civil government of Massachusetts, with related geography and English history directly contributory to a knowledge of United States history, in Latin or French, in algebra, or plane geometry, and in any two of the following subjects: Physiology and hygiene, physics, chemistry, botany, and physical geography—prescribes a qualification in general education which is reasonable as a prerequisite for examination for admission to the bar.

[Ed. Note.—For other cases, see Attorney and Client, Cent. Dig. §§ 4-9; Dec. Dig. § 4.*]

Report from Supreme Judicial Court, Suffolk County.

Petition by Emile F. Bergeron for an examination for admission to the bar. Ordered that petitioner be not entitled to take the examination as to his legal qualifications until he has passed an examination as to his general education.

J. J. Cummings, of Boston, for petitioner. H. R. Bailey, of Boston, for Board of Bar Examiners.

RUGG, C. J. This is a petition for examination for admission to the bar. The facts are these: The petitioner has completed $3\frac{2}{3}$ years' work at a high school in Fall River, without having graduated, has spent three years in the study of law at a law school and has graduated with the degree of LL. B., has taken and failed to pass examinations for admission to the bar in June and again in December, 1913, and now desires to take the examination for a third time. He has complied with all the preliminary requirements except that part of rule 7 of the "Rules of the Board of Bar Examiners" relative to "General Education," which took effect on February 2, 1914, and which is printed in a footnote.¹ The present petition was filed

December 26, 1914. The petitioner has not complied with any of the provisions of that rule. Being neither a graduate of any such school as is mentioned in (a) and (b) he has not passed the examination prescribed in (c).

[1, 2] It is contended that this rule is abrogated by St. 1914, c. 670, which took effect on September 1, 1914. Section 1 of that act amended R. L. C. 165, § 40, wherein the board of bar examiners were authorized to make rules subject to the approval of the Supreme Judicial Court as to the qualifications of applicants for admission to the bar, by adding the proviso that such an applicant "shall not be required to be a graduate of any high school, college or university." As matter of construction, it is plain that this statute in no way affects the rule. The rule does not require any such qualification as is described in the statute. It simply establishes an educational test which may be met in several ways. One is by being a graduate of a college. Another is by being a graduate of a day high school or school of equal grade. But the applicant may qualify equally by passing the entrance examinations of a college, or of the college entrance examination board, or of equivalent examinations, or by

substantially equivalent thereto, or has complied with the entrance requirements of a college; or

(b) Is a graduate of a day high school, or of a school of equal grade; or

(c) Has passed the examinations given for admission to the state normal schools of Massachusetts in the following subjects:

I. Language.—English, with its grammar and literature.

II. United States History.—The history and civil governments of Massachusetts and the United States, with related geography and so much of English history as is directly contributory to a knowledge of United States history.

III. (a) Latin or
(b) French.

IV. (a) Algebra or
(b) Plane Geometry.

V. Any two of the following:
(a) Physiology and Hygiene,
(b) Physics,
(c) Chemistry,
(d) Botany,
(e) Physical Geography.

¹ After February 1, 1914, an applicant must show by certificate or certificates that he—

(a) Is a graduate of a college, or has passed the entrance examinations of a college, or of the College Entrance Examination Board, or examinations

complying with the entrance requirements of a college, or by passing the examinations for entrance to the state normal schools of Massachusetts in the specified subjects. Thus five ways of satisfying the educational requirements other than by being a graduate of a high school or college are defined. It has been suggested that the statute must be construed as expressing an intent on the part of the Legislature to compel the bar examiners to cease from enforcing the rule. Doubtless all statutes are to be interpreted in such way as to render effective their manifest purpose. Remedial acts are to be construed so as to afford the relief intended. But no intent can be read into a statute which is not there either in plain words or fair implication. There are no means of ascertaining the purpose and effect of a statute except from the words used when given their common and approved meaning. They are to be read in the light of attendant conditions and the state of the law existent at the time of their enactment. But they cannot be stretched beyond their reasonable import to accomplish a result not expressed.

It is not necessary to determine the constitutionality of this statute, a question adverted to at the argument, as to which authorities in other jurisdictions are not in harmony, for the reason that the statute does not affect the rule.

It is urged, however, that the rule is unreasonable in itself and hence ought not to be enforced. This presents an important question. The rule was approved by the justices of this court before it was promulgated. That was done without the benefit of argument. It now is the duty of the court to guard most carefully against any influence flowing from previous thought about the matter. The circumstances are analogous to those where the justices of this court have

given an advisory opinion under the Constitution to the executive or legislative departments of government and subsequently are obliged to reconsider the same matter as a court between parties litigant. *Green v. Commonwealth*, 12 Allen, 155, 164; *Young v. Duncan*, 218 Mass. 346, 106 N. E. 1. The determination of the question is approached with every effort to impartiality. It has been considered in a manner as careful and thorough as a sense of judicial duty can impose.

[3, 4] The question thus presented in its broader aspects is whether any qualification in general education reasonably can be required as a prerequisite for admission to the bar. The natural impulse of any believer in a republican form of government is that no barrier ought to be raised against any individual engaging in any pursuit. Unrestricted freedom of choice and absolute equality of opportunity in every employment are elementary principles. Hence, at first sight any restrictions seem contrary to the spirit of our Constitution. But it is apparent that there are limitations imposed by the nature of things which cannot be ignored nor overleaped. The ignorant cannot undertake a handicraft without training. Statutes in recent years as to plumbers, pharmacists and many branches of the civil service furnish numerous illustrations of the recognition of this principle. The passing of an examination by teachers in the public schools has been required for many years. The principle of preliminary examinations is thus thoroughly established as well by legislative recognition as in reason. Its proper scope is only the matter to be determined. On that point it becomes necessary to consider somewhat closely the duties of an attorney at law. He is in a sense an officer of the state. From early days he has been required to take and sub-

ingly consenting to any raise, groundless or unlawful suit, from doing or permitting to be done any falsehood in court, and which binds him to the highest fidelity to the courts as well as to his clients. The courts being a department of government, this is but another way of saying that his obligation to the public is no less significant than that to the client. He is held out by the commonwealth as one worthy of trust and confidence in matters pertaining to the law. Of course no one can know all law. But every attorney ought to possess learning sufficient to enable him either to ascertain the law or to determine his limitations in that regard for the purpose of giving safe advice. It is impracticable to attempt to name the matters about which he may be asked to act. Stated comprehensively they include the liberty, the property, the happiness, the character and the life of any citizen or alien. They touch the deepest and most precious concerns of men, women and children. The occasions which lead one to seek the assistance of a lawyer often are emergencies in that person's experience which prevent the exercise of critical discernment in selecting a counsellor. They involve the utmost trust and confidence. In proportion as the client is poor, ignorant or helpless, and hence less likely to be able to exercise judgment in making choice, the necessity of adequate learning and purity of character on the part of every lawyer increases in importance. Thus the interest of the public in the intelligence and learning of the bar is most vital. Manifestly the practice of the law is not a craft, nor trade, nor commerce. It is a profession whose main purpose is to aid in the doing of justice according to law between the state and the individual, and between man and man. Its members are not and ought not to be

owing a duty as well to the public as to private interests. No one not possessing a considerable degree of general education and intelligence can perform this kind of service. Elemental conditions and essential facts as to the practice of law must be recognized in the standards to be observed in admission to the bar.

The right of any person to engage in the practice of the law is slight in comparison with the need of protecting the public against the incompetent. The propriety of requiring some educational qualifications as a prerequisite for admission to the bar seems plain. The exact extent of general education to be required is a matter about which opinions may differ. Indeed, the bar examiners have presented modifications of the present rules for approval by the court, which are now under consideration. But that circumstance has nothing to do with the present petition.

The rule here assailed requires something less in substance than the equivalent of an education in the average high school, as we understand it. It may be satisfied by showing that one is a graduate of a high school or college or has passed examinations which are recognized generally as evidence of the possession of those qualifications. Or it may be met by passing the examinations in designated subjects at the state normal schools. It was stated at the argument that arrangements with the officers in charge of these institutions had been made for the taking of such examinations by candidates for the bar. There is no unjust discrimination in the rule. Such certificates of graduation are accepted in many institutions of learning as evidence of qualification. The normal school examination, while more restricted as to subjects than the courses in many high schools, affords some range

of choice and appears to be reasonable in scope.

The educational requirement does not seem unduly severe. It is urged that it is a requirement which many men who have achieved signal success in the practice of the law could not have met at the time they were admitted to the bar. Doubtless that is true. But requirements which could not have been complied with in remote districts, where facilities for the acquisition of knowledge and general instruction were scanty, hardly can be regarded as a universal standard for other times and places. In this commonwealth, where there is a free public library in every city and town with a single exception and where every family is within reach of a free public library, where the compulsory school age is high and where provision for learning by day and evening schools is ample, the educational requirement of the rule is not beyond the reasonable reach of those possessing the native ability, the energy and the perseverance necessary to enable them to render moderately valuable service to the public as attorneys. It may be also that many members of the bar now in practice might not be able to pass such an examination. The mental strength developed by the study necessary to master the required subjects in general education is more significant than the book learning implied. The facts learned may be forgotten, the trained mind remains. An examination at best is an imperfect standard. But it is the only practicable expedient known for determining intellectual fitness in cases like this. The subjects chosen for this examination are designed to eliminate those whose general intelligence, learning and mental capacity are inadequate to enable them to be useful to that part of the public who may seek their aid. Even if it should happen in rare instances that one who

could be a useful attorney should be excluded, that is on the whole far better than to have the public harmed and clients subject to injury which would be irreparable by the admission of considerable numbers of those who are deficient in education and incapable in fact. There must be a general rule. Almost every general rule of municipal or natural law in some instances appears to work a hardship upon an individual. The law of gravitation acts indifferently upon the just and the unjust.

All those who had commenced their legal studies before the adoption of this rule were by its terms given time enough to complete the usual period of study and make two attempts to pass the bar examinations before it became effective. Thus reasonable notice seems to have been given.

Measured by the standards established in other states, the requirement of this rule is reasonable. It appears from a compilation of the Rules for Admission to the Bar published in 1913 by the West Publishing Company, that there are general educational requirements for admission to the bar in 22 states of the Union.² In most of these states graduation at a recognized high school or its equivalent is required and a certificate of graduation is accepted as evidence of qualification. In Pennsylvania and New York at least the educational requirement is appreciably more severe. In view of all these considerations we are satisfied that the rule is not unreasonable and that the petitioner is not entitled to take the examination as to his legal qualifications until he has passed an examination as to his general education.

So ordered.

² Colorado, Connecticut, Delaware, Illinois, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, South Carolina, Vermont, Washington, West Virginia, Wisconsin, Philippine Islands. The examination on legal subjects in Louisiana appears to demand a considerable knowledge of Latin and probably of French.

Principal Universities and Colleges in the United States

[The statistics embraced in this table were communicated to the New York World Almanac by the Presidents of the respective institutions, and represent their condition at the close of 1914.]

Universities and Colleges.	Location.	Number of Students.	Number of Instructors.	Vols. in Library.
1—Columbia Univ.....	Manhattan Boro, N. Y.	14,098	920	530,000
2—University of Minnesota *..	Minneapolis, Minn.....	8972	496	185,000
3—College City of N. Y.....	Manhattan Boro, N. Y.	8465	225	62,661
4—University of Cal.*.....	Berkeley, Cal.....	7526	434	282,072
5—University of Chicago *...	Chicago, Ill.....	7301	274	431,362
6—University of Wis.*.....	Madison, Wis.....	6765	651	207,016
7—Cornell University*.....	Ithaca, N. Y.....	6496	700	423,570
8—University of Pa.....	Philadelphia, Pa.....	6332	560	450,000
9—Univ. of Michigan *.....	Ann Arbor, Mich.....	6258	460	337,417
10—New York Univ.....	New York City.....	6150	450	113,000
11—Valparaiso Univ.*.....	Valparaiso, Ind.....	5700	209	15,000
12—Univ. of Illinois *.....	Urbana, Ill.....	5539	704	308,000
13—Ohio State Univ.*.....	Columbus, O.....	4943	417	108,500
14—N. W. University *.....	Evanston, Ill.....	4882	427	183,661
15—Harvard Univ.....	Cambridge, Mass.....	4366	803	1,121,000
16—Univ. of Nebraska *.....	Lincoln, Neb.....	4133	255	115,000
17—Iowa St. C. A. & M. Arts *..	Ames, Iowa.....	4000	250	45,000
18—Syracuse Univ.*.....	Syracuse, N. Y.....	4000	300	91,403
19—Hunter College.....	New York City.....	3771	190	18,500
20—Pratt Institute *.....	Brooklyn, N. Y.....	3537	189	106,349
21—Temple University *.....	Philadelphia, Pa.....	3525	256	9,200
22—Pa. State College *.....	State College, Pa.....	3500	245	54,275
23—Teachers' College *.....	Manhattan Boro, N. Y.	3479	187	68,600
24—University of Wash.*.....	Seattle, Wash.....	3840	177	66,715
25—Yale University.....	New Haven, Conn. ...	3272	457	900,000
26—University of Tenn.*.....	Knoxville, Tenn.....	3189	201	35,000
27—Ill. State Norm. Univ.*....	Normal, Ill.....	3123	93	26,000
28—Carnegie I. of Tech.....	Pittsburgh, Pa.....	3033	197	250,000
29—State Univ. of Ia.*.....	Iowa City, Ia.....	2900	257	110,000
30—Univ. of Pittsburgh *.....	Pittsburgh, Pa.....	2830	329	20,000
31—Tulane Univ.....	New Orleans, La.....	2650	281	74,000
32—Univ. of Southern Cal.*...	Los Angeles, Cal.....	2649	250	26,000
33—Univ. of Kansas *.....	Lawrence, Kan.....	2625	200	100,000
34—Indiana Univ.*.....	Bloomington, Ind.....	2620	113	98,256
35—Univ. of Texas *.....	Austin, Texas.....	2617	288	99,816
36—Oregon State Agr. Col.*...	Corvallis, Ore.....	2435	131	28,300
37—Purdue University *.....	Lafayette, Ind.....	2399	190	44,000
38—Okla. Ag. & Mech. Col.....	Stillwater, Okla.....	2376	85	17,165
39—Mechanics Institute *.....	Rochester, N. Y.....	2344	75	3,500
40—Ohio University *.....	Athens, Ohio.....	2276	92	46,000
41—Kans. State Agr. Col.*.....	Manhattan, Kans.....	2239	239	47,400
42—Univ. of Cincinnati *.....	Cincinnati, O.....	2190	238	79,400
43—Mich. Agri. College *.....	E. Lansing, Mich.....	2010	130	38,000
44—Leland Stanford, Jr.*.....	Stanford Univ., Cal....	1879	229	239,133
45—Boston Univ.*.....	Boston, Mass.....	1827	170	62,000
46—Oberlin College *.....	Oberlin, O.....	1809	181	144,485
47—Mass. Inst. Tech.*.....	Boston, Mass.....	1800	275	127,147
48—Highland Park College *...	Des Moines, Ia.....	1800	50	7,000
49—Ohio Northern Univ.*.....	Ada, Ohio.....	1764	40	
50—Berea College *.....	Berea, Ky.....	1717	53	29,000
51—Marquette Univ.....	Milwaukee, Wis.....	1670	240	13,000
52—Wash. Univ.*.....	St. Louis, Mo.....	1644	197	142,589
53—Smith College.....	Newhampton, Mass....	1640	135	48,000
54—Georgetown Univ.....	Washington, D. C.....	1626	196	153,000
55—Fordham Univ.....	Fordham, N. Y. C.....	1626	154	74,000
56—Geo. Wash. Univ.*.....	Washington, D. C.....	1611	189	45,740
57—Princeton Univ.....	Princeton, N. J.....	1599	202	320,701

*Indicates co-education of sexes.

58—State College of Wash.*...	Pullman, Wash.....	1537	150	39,351
59—Wash. State College*.....	Pullman, Wash.....	1532	156	39,351
60—Tuskegee Institute*.....	Tuskegee, Ala.....	1527	183	20,000
61—Howard Univ.*.....	Washington, D. C.....	1500	125	25,000
62—Baylor Univ.*.....	Waco, Texas.....	1500	49	3,000
63—St. Louis Univ.....	St. Louis, Mo.....	1471	252	74,512
64—Wellesley College.....	Wellesley, Mass.....	1452	140	79,480
65—Louisiana State U.*.....	Baton Rouge, La.....	1434	87	36,300
66—Loyola Univ.....	Chicago, Ill.....	1432	127	51,000
67—Drake Univ.*.....	Des Moines, Iowa....	1408	80	26,000
68—West Va. Univ.*.....	Morgantown, W. Va...	1392	92	49,700
69—Dartmouth College.....	Hanover, N. H.....	1392	116	125,000
70—Univ. of Ore.*.....	Eugene, Ore.....	1386	—	50,800
71—Univ. of Oklahoma*.....	Norman, Okla.....	1377	130	24,000
72—Johns Hopkins.....	Baltimore, Md.....	1374	240	181,300
73—Univ. of Colo.*.....	Boulder, Colo.....	1350	206	77,174
74—Univ. of Ala.*.....	Univ. Ala.....	1350	135	32,000
75—West. Reserve Univ.....	Cleveland, O.....	1327	228	110,000
76—Hampton N. & A. I.*.....	Hampton, Va.....	1309	130	34,219
77—Creighton Univ.....	Omaha, Neb.....	1232	150	48,000
78—Tufts College.....	Tufts Col., Mass.....	1223	242	71,608
79—Univ. of N. D.*.....	University, N. D.....	1217	99	53,647
80—State Univ. of Ky.*.....	Lexington, Ky.....	1215	106	28,196
81—Southwestern Univ.*.....	Georgetown, Texas....	1202	56	20,000
82—Tri-State College*.....	Angola, Ind.....	1200	24	3,500
83—Univ. of Maryland*.....	Baltimore, Md.....	1200	211	25,000
	Annapolis, Md.....			
84—Univ. of Denver*.....	Denver, Colo.....	1159	127	37,971
85—Univ. of Notre Dame.....	Notre Dame, Ind.....	1150	90	85,000
86—University of Maine*.....	Orono, Me.....	1150	130	50,116
87—Mississippi A. & M. C.*...	Agri. College, Miss....	1150	77	29,000
88—Ohio Wes'n Univ.*.....	Delaware, Ohio.....	1132	66	67,432
89—Vassar College.....	Poughkeepsie, N. Y....	1120	121	86,000
90—Univ. of So. Minn.*.....	Austin, Minn.....	1101	37	11,000
91—Vanderbilt Univ.*.....	Nashville, Tenn.....	1100	125	53,000
92—Simmons College.....	Boston, Mass.....	1068	123	21,557
93—N. D. Agri. College*.....	Agri. College, N. D....	1050	65	24,978
94—Colo. Agri. College*.....	Fort Collins, Colo....	1050	60	—
95—Univ. of Utah*.....	Salt Lake City, U....	1041	80	38,757
96—Catholic Univ. Am.....	Washington, D. C.....	1037	85	75,000
97—Georgia Sc. of Tech.....	Atlanta, Ga.....	1002	—	12,000

*Indicates co-education of sexes.

Final Examination Questions in Prominent Law Schools

<i>Subject</i>	<i>Law School</i>	<i>Professor</i>
CRIMES	UNIVERSITY OF PENNSYLVANIA.....	WM. E. MIKELL
TORTS	UNIVERSITY OF CHICAGO.....	JAMES P. HALL
EQUITY	COLUMBIA UNIVERSITY.....	HARLAN F. STONE
SALES	STANFORD UNIVERSITY.....	F. C. WOODWARD
CORPORATIONS	UNIVERSITY OF WISCONSIN.....	H. S. RICHARDS
AGENCY	UNIVERSITY OF MICHIGAN.....	E. C. GODDARD
REAL PROPERTY....	NORTHWESTERN UNIVERSITY.....	A. M. KALES

CRIMES EXAMINATION

UNIVERSITY OF PENNSYLVANIA, JUNE, 1914

(*Professor Mikell*)

1. A. gave birth to an illegitimate child. The child was born dead. B., the father of A., took the body of the child against the will of A., and burnt it, to prevent the holding of a coroner's inquest. Is B. guilty of any offense?

2. A., having determined to kill B., learned that B. was about to start on a railroad journey and that he had engaged berth 8 on the sleeper. A. engaged berth 6, adjoining, and retired to this berth as soon as the train started. By mistake of the porter another passenger, X., was given berth 8 and B. was given berth 10. This change was unknown to A. During the night A., intending to kill B., shot through the panel that separated berths 6 and 8. The bullet grazed X.'s head and passed on through the panel separating berths 8 and 10 and struck B. in the shoulder. Of what offense or offenses, if any, is A. guilty?

3. A. was a professional lion tamer, employed in B.'s circus. A. was scheduled to give a performance in which he was to enter the cage of a lion and put the animal through certain tricks. He had had a rehearsal earlier in the day, at which the lion had appeared to be in a bad temper. Just previous to the performance he had informed B. of this fact and told B. that the performance must be abandoned for that day. B. refused to consent to this and told A. that if A. did not go on with the performance he would discharge him immediately. As they were in a strange city, and A.'s wife was ill, A. consented to enter the cage. It was the duty of one X. to stand outside of the cage during the performance, armed with a pistol, for the pur-

pose of killing the lion if it should attack the performer. As A. entered the cage X. took his stand outside, but without the pistol, which he had forgotten. During the performance, the lion attacked A. and knocked him down, and a few minutes later struck him a blow which killed him. Had X. been armed he could have killed the lion before it struck the fatal blow. Of what crime, if any, are B. and X. guilty?

4. A statute of the state of X. provided that, if any dog were found running at large without having on a muzzle, the owner of said dog should be guilty of a misdemeanor. A., a resident of the state of T., brought an unmuzzled dog on the train into the state of X. As A. stepped off the train the dog, which A. was holding in his arms, got loose and bit Z. A. was indicted under the statute. A. did not know of the statute. Can he be convicted?

5. X. went to A., a dentist, to have an aching tooth drawn. He designated the tooth, but A. by mistake pulled another tooth. Can A. be convicted of assault and battery?

(b) Would your answer be the same if A. intentionally pulled the wrong tooth, the one pulled being a sound tooth?

(c) What would be your answer if A. pulled both the tooth designated by X. and also pulled another, which other needed to be pulled?

6. A. had stolen a watch from X., and had pawned it with B., receiving \$15 on it. C. learned of the larceny and the pawning, and told A. that unless A. would give him \$10 he would inform on him. A. thereupon gave C. the pawn ticket and told C. to get the watch

and bring it to him and they would sell it and divide the money. C. took the ticket, but instead of redeeming the watch, and returning it to A., took the watch to the owner and told him he had found it, and would return it to him if he would pay him five dollars, but that otherwise he would keep it.

Of what crime, if any, can C. be convicted in respect of A.?

(b) In respect of X.?

7. A statute made it a misdemeanor for any one to sell canned goods in a state of fermentation. A., a grocer, sold B. a can of molasses. As B. was opening the can it exploded and killed B. The explosion was due to the fermentation of the molasses. A. in selling the molasses was ignorant of the fact that the molasses was fermented. Of what crime or crimes, if any, can A. be convicted?

8. A., on entering a club, handed B., the attendant, his overcoat. Subsequently, on leaving the club, he asked for his overcoat, and the attendant brought out, by mistake, the coat of X., and held it for A. to put on. A. turned his back and the attendant put the coat on A. Two minutes later A. put his hand in the pocket of the coat, and found a purse therein. He looked at the purse, saw it was not his, and then discovered for the first time that the overcoat did not belong to

him. He pawned the coat, and kept the purse.

(a) Can A. be convicted of larceny of the coat?

(b) Of larceny of the purse?

9. A., suspecting Z., his wife, of adultery with B., hired X., a detective, to discover whether his suspicion was justified. X. forced open the door of B.'s room, and found Z. and B. committing adultery, whereupon he shot at B., wounding him. B. grappled with X., and they fought. During the fight B. secured possession of the pistol and broke away from X. X. followed him half way across the room, where B. shot X., killing him. Of what crime is B. guilty?

10. A. entered B.'s restaurant, and saw on the bill of fare: "Lobster—warranted fresh." He ordered lobster. The fresh lobster had just been sold out, and X., the waiter, served A. with canned lobster instead. A. was made seriously ill by eating the lobster served. X. had general orders from B. to serve canned lobster when there was no fresh lobster in stock. B. and X. are each indicted for

(1) Obtaining money by false pretense.

(2) Assault and battery.

(3) Assault and battery with intent to kill.

Can either or both of them be convicted of any or all of these charges?

TORTS EXAMINATION

UNIVERSITY OF CHICAGO, MARCH, 1914

(Professor Hall)

[Four hours allowed. State conclusions first, involved. If more facts are required, explain how the case.]

1. X., living in a college dormitory, puts on a mask, raps on the door of a neighboring student, A., and, when A. opens the door, X. points an unloaded pistol at him and orders him to hold up his hands. X. meant to frighten A. in jest. A. recognizes X. and knows it is meant as a joke, but, unreasonably believing the pistol loaded, is much concerned lest it be accidentally discharged, and so complies with X.'s order. What are A.'s rights against X.?

2. X., engaging in a trial flight with an experimental type of aeroplane, is compelled by a slight accident suddenly to descend at a point where the ground is thickly covered with market gardens. He controls the machine intentionally so as to alight in A.'s garden rather than elsewhere, reasonably believing he will do the least amount of damage there. In fact he destroys a bed of valuable imported plants worth \$100, for which A. sues. What decision?

3. X., living in the country, rides his bicycle several miles in haste to procure med-

icine for his child who is seriously ill. He leaves the bicycle beside the street while getting the medicine from the doctor. When he returns he reasonably believes he sees A. just making off with his bicycle, which he takes from A. by reasonable force and hastens home with the medicine. In fact X.'s bicycle was stolen by T. as soon as X. went into the doctor's office, and the wheel X. took from A. belonged to A., who had just ridden up and was dismounting when X. saw him. What are A.'s rights against X.?

4. X. asks P. to lend him a horse for a few days. P. assents and tells his stableman, Y., to let X. have the horse. Instead, Y. carelessly delivers to X. the horse of A., a guest of P. X. overfeeds the horse, causing its death after two days' use of it. A. sues X. and Y. in trover. What decision in each case?

5. X., a stranger, enters the woodland of A. and sleeps in a deserted cabin there. Next morning, while X. is chopping some wood in the cabin with due care, a splinter flies

through the cabin window, breaking it and striking A. who is approaching the cabin. A.'s presence was unforeseeable to X. What are A.'s rights against X.?

6. X. builds a fire in his stubble field so near a hay stack on A.'s land that a wind of moderate violence might have caused the fire to spread to the stack. A small but unforeseeable whirlwind carries the fire to A.'s stack, and would have done so had it been placed far enough away to be safe from ordinary winds. Is X. liable to A. for the burning of A.'s stack?

7. X., a chemist, has a dispute with A. over a bill for supplies furnished to X. by A. X. refuses to pay the bill and forbids A. ever to enter his place of business again. A few weeks later A. enters X.'s place of business to endeavor to settle the matter, and is injured by the explosion of a carboy of acid kept by X. for use in his laboratory. What are A.'s rights against X.?

8. X., a stockbroker, tells P., his clergyman, that the stock of R. Company is going to go up in the market soon, and warns P. to tell no one of this. P. privately informs his friends, A., B., and C., of this, telling

them that X. has told him this in confidence. In reliance upon this, A., B., and C. buy R. Company stock and are much injured by its fall in price which was caused by the operations of X. X. hoped that this result would follow from his false statement to P. What are the rights of A., B., and C.?

9. A., an architect, draws the plans for a large private house erected in a fashionable Chicago suburb. The design is novel, and it is severely criticized by the X. Journal as an "architectural monstrosity." A. sues X. Co. for libel. Discuss the defenses X. may make, and the answers thereto that may be urged by A.

10. X. owns a vacant lot upon the most fashionable residence street in Chicago. After a violent quarrel with his neighbors he builds a small, unsightly shack in the middle of the lot and leases it at a nominal rent to (for that neighborhood) very undesirable tenants, upon the express condition that they maintain a hand laundry and hang the washings daily in the front yard. X. does this solely to injure the neighboring property values, in which he is successful. Is he liable therefor?

EQUITY EXAMINATION

COLUMBIA UNIVERSITY, JANUARY, 1914

(Professor Stone)

[Give your reasons. Answer should not exceed two pages in length.]

1. A. agreed to sell land to B. for \$1,000. B. gave to A. his promissory note for that amount on account of the purchase price, payable in three months, on the day set for closing the title. At the maturity of the note neither party tendered performance of the contract, and a week later A. sold the note to X., who had no notice of the contract. A. then conveyed the land to Y. (who had no notice of the contract) in payment of a debt. What are the rights of the parties?

2. A. sold lots subject to a general building plan, which was fully described on a map filed in the office of the registrar of deeds and referred to in all the subsequent deeds of the property described on the map. The plan stipulated that only dwelling houses should be built on the lots and that no offensive trade should be carried on on any of the lots. Lot No. 23 on the plan was not owned by A. at the time of filing the plan. A. sold lot 24 on the plan to a purchaser through whom X. ultimately took title. Thereafter A. acquired lot 23, which he conveyed to Y. Y. conveyed one-half of the lot to Z. The character of the neighborhood has changed from a residence to a business district. Y. threatens to build a boiler factory on the part of lot 23 belonging to him. Z. wishes to erect

a school for young ladies on his lot. What are Z.'s rights with respect to X. and Y.?

3. A. and B. owned adjoining plots of land. B.'s barn was so located that it obstructed the view from A.'s porch, located on A.'s plot. A. and B. entered into a written agreement whereby, for the sum of \$2,000, which A. agreed to pay, B. agreed to move his barn to another part of B.'s land, so as not to obstruct the view from A.'s porch. A. is willing to pay B. \$2,000, but B. refuses to perform. What are the rights of the parties? What would be your answer if B. had conveyed the land to C., who had notice of the contract?

4. A. entered into a written contract with B. for the purchase of B.'s farm "Blackacre," stipulated to contain 100 acres. At the time B. did not have title to the land, and the contract stipulated that in the event of B.'s failure to perform the contract A.'s remedy should be limited to the recovery of a stipulated amount as damages. B. has acquired title to the land, except one acre of meadow, but A. refuses to perform. What are B.'s rights?

5. A. agreed to sell and B. agreed to buy land for \$10,000 by a contract which stipulated that if plans for a subway under an abut-

ting street should be adopted before the date for performance A. should have the right to cancel the contract on payment of \$1,000. Thereafter B. died, leaving X. as executor and Y. his heir. A. exercised his right of canceling the contract. What are the rights of X. and Y.?

6. (a) A. agreed in two separate contracts to sell B. two city lots of land having a definitely ascertainable market value. The contract for the sale of lot No. 1 was oral. The contract for the sale of lot No. 2 was written. A. has conveyed lot No. 1 to B., but B. refuses to accept a conveyance of the second lot, and refuses to pay the purchase price for either lot. What are A.'s rights?

(b) Suppose B. refused to take title to the second lot because a statute of inheritance under which A. claimed to inherit lot No. 2 contained an ambiguity which had not been judicially interpreted. What are A.'s rights?

7. A. and B. entered into an agreement for the sale by A. to B. of the farm known as "Whiteacre." "Whiteacre" was a farm of well-defined boundaries, and did not include a water power or riparian rights on a stream near by. The boundaries of the farm were accurately described by A. in the negotiations for sale. A. did not know that B. was buying the property in order to acquire the water power, under the mistaken belief that it was included in the boundaries of the farm. When the contract was reduced to writing and signed by the parties, the draughtsman by mistake included within the description two acres of "Blackacre," an adjoining farm, belonging to A. What are the rights of the parties?

8. (a) Distinguish between mutuality as a defense and mutuality as a ground for equitable relief.

(b) Outline briefly the application of hardship as a defense.

SALES EXAMINATION

STANFORD UNIVERSITY, DECEMBER, 1912

(Professor Woodward)

[Time: Three and one-half hours]

1. Elwood orally contracted to sell to Ladd a bin of potatoes for \$200, it being agreed that Elwood was to sort, sew in bags, and deliver the potatoes at the railroad station. At the time of the agreement Ladd examined the potatoes and "helped himself" to a small bag which he wished to send away as a sample. Elwood hauled one load of the potatoes to the station and was told by Ladd to put them in a certain car. Before they were put into the car, Ladd cut open a couple of sacks and declared that the potatoes were not properly sorted and he would not take them. Elwood put them into the car, however, and now sues for the price. Recover?

2. Pierson went to the store of Harvey, a furniture dealer, and asked for a folding bed. Harvey showed him a bed and Pierson bought it. The bed proved dangerous to the persons using it, not from defective parts, but from faulty design, and in fact it collapsed while Pierson was sleeping in it, injuring him seriously. Harvey had no knowledge of the dangerous character of the bed, and the mechanism was observable upon inspection. Pierson sues Harvey for breach of an implied warranty of fitness. Recover?

3. Black, the owner of an apple orchard in Santa Cruz county, contracted in writing with Jones, a fruit dealer, to sell Jones the entire yield of his orchard for two years. The yield of the first year was duly delivered to Jones; but when the yield of the

second year matured Black sold his orchard to Johnson, who knew nothing of the contract with Jones. Johnson picked the apples and shipped them to Los Angeles, where they were bought by McElroy, who knew nothing of any claim except Johnson's. What, if any, are Jones' rights against McElroy and Johnson?

4. Stephens & Co., commission merchants, of Omaha, Neb., advanced \$2,000 to Weston, of Cedar Rapids, Iowa, under an agreement by which Weston was to ship bacon and lard to Stephens & Co. to be sold by the latter and the proceeds applied on the debt. Pursuant to the agreement Weston shipped a quantity of bacon taking a bill of lading to his own order, but directing the railroad company to deliver the goods to Stephens & Co. immediately upon their arrival without waiting for the production of the bill of lading. As the railroad's agents knew both parties well and had followed similar directions in many previous instances, they made no objection and upon the arrival of the bacon in Omaha it was immediately delivered to Stephens & Co. The day following Weston sold the bill of lading to the Western National Bank of Omaha, which presented it to the railroad and was informed that the goods had already been delivered. The bank now sues both Weston and the railroad for conversion. Recover?

5. Maynard offered to sell a hay loader to Dean for a certain price and said it "would

do good work and would load hay from wind-rows." Dean replied that he did not want a hay loader. Two months later Dean asked Maynard "if that hay loader was still for sale at the same price," and Maynard replied that it was. Dean then agreed to buy it, paid the price, and took the hay loader away. Later he found that the loader did not do good work, and complained to Maynard, whereupon Maynard said: "You give it another trial; I warrant that it will do thoroughly good work." Dean tried it again, but without any better results. In fact, the loader would not do good work. What, if any, are Dean's rights?

6. Henry Tupper, of San Jose, and William Morris, of Sacramento, met in San Francisco, and Tupper proposed to Morris that Tupper exchange his mare Daisy for Morris' mare Grace. Morris said he would agree to that if Tupper would make it a term of the contract that a debt of \$50 owing from Morris to Tupper be canceled. Tupper replied, "All right," and it was then agreed that each should ship his mare to the other within five days. Two days later Morris shipped Grace to Tupper, but upon her arrival Tupper refused to take her, and the next day he sold and delivered Daisy to George Baxter, who knew nothing of the previous contract and paid \$300 for her. Morris has demanded the mare Daisy from both Tupper and Baxter, and now sues both of them for conversion. Recover?

7. The Wilson Engine Company made what was called a "lease" of an engine and boiler to Chapman, by the terms of which

Chapman was to pay a "rental" of \$1,000 per month for four months, and upon the payment of the final installment the engine was to become the property of Chapman. It was also provided that, in case of default by Chapman in the payment of any installment, the entire sum of \$4,000 was to become immediately payable, and the company was to have the right to retake the engine. Chapman paid the first installment, but failed to pay the second, and the company took away the engine. The next day Chapman tendered the entire sum of \$4,000 upon condition that the engine be returned to him, but the company declined to return the engine. The company now claims the right to keep the engine and recover the balance of the \$4,000. Chapman claims that the company must either return the engine to him or return the sum of \$1,000 paid by him. What are the rights of the parties?

8. Carr contracted to sell Willis 15,000 feet of lumber, of a specified quality and size, to be delivered f. o. b. San Francisco, and to be paid for by four months note. Willis chartered the vessel Ranger for a voyage to New York, and notified Carr, who shipped the lumber by rail from a point inland and had it loaded on the Ranger. Willis gave his note for the price, but before the ship sailed, or any bill of lading was issued, Carr learned that Willis was insolvent, and notified the master to stop the lumber in transitu. The master permitted Carr to unload the lumber and take it away. Subsequently Willis was adjudged bankrupt, and his trustee claimed from Carr the value of the lumber. Should the claim be allowed?

CORPORATIONS EXAMINATION

UNIVERSITY OF WISCONSIN, JUNE, 1914

(Professor Richards)

1. Point out the characteristic features of a corporation as compared with (a) partnership; (b) joint-stock company.

2. By a concerted scheme of all of the defendant directors of a corporation, they sold certain mineral lands to the corporation at a price greatly in excess of their intrinsic market value, taking in pay stock of the corporation, thereby gaining control of the corporation and preventing any disclosure to the stockholders of the misappropriation of the company's assets. Later the defendants organized another company, which they also controlled, and to which all the assets, including good will, choses in action, patents, etc., were conveyed. The transfer was effected on the basis of the exchange of share for share of the first corporation for the stock of the second. The second corporation

later elected a disinterested board of directors, who discovered the fraud, and now sue the defendants in the name of the corporation to recover the secret profits. Demurrer to bill. Judgment for whom, and why?

3. Ames was the manager of a syndicate organized to take over the United States Iron Co. and to buy other property. The corporation was reorganized, the property purchased, and stock issued. Bates, one of the subscribers to the stock of the reorganized company, to whom stock had been issued, discovering that Ames had a personal interest in the property purchased, tendered to him the stock received in the reorganized company, and sued to recover the purchase price. Can he recover, and why?

4. Ames is a stockholder in a corporation owning practically all the stock of five other

of the corporate business, and brings suit against the holding company and its directors, and moves for the production of the books, not only of the defendant company, but those of the corporations under its control. Should this motion be granted, and why?

5. Ames, with others, signed the following paper: "We, the undersigned, mutually agree to subscribe for the number of shares of stock set opposite our names in the X. Mfg. Co., a corporation to be organized under the laws of Wisconsin." Ames subscribed for 50 shares, par value \$100. After the articles were filed, but before the organization meeting, Ames notified the organizers that he would not take the stock. In a suit by the company on his subscription, what is his liability, if any, and why?

(a) Would your answer be different if the agreement was with a going company to purchase treasury stock (i. e., company's stock owned by it), and why?

6. The X. Hardware Company, a Wisconsin corporation, leased a tract of land fronting on Lake Mendota, for the purpose of establishing and operating an amusement park. The lease was for ten years, rental \$1,000 a year, payable semiannually. Ames is the lessor. The X. Company also entered into a contract with Ames to build a pier and dancing pavilion on the property for \$4,000, payable in installments as follows: \$500 on the completion of the pier; \$1,500 when the building is inclosed; the balance on the completion of the building. The company failed to pay the rent when due. Ames sues. Defense, *ultra vires*. What result? The company also failed to pay the first installment, and refuses to go on with building contract. Ames sues to recover first installment and damages for breach of contract. Same defense. What result, and why?

7. Bates, an unsecured creditor and a stockholder of the X. Co., asks your advice as to whether he can prevent the X. Co. from carrying out the lease referred to in No. 6 and its building plans. State what right he has to proceed in either capacity, and the form of procedure.

8. The X. Co., after attempting to borrow money by mortgage at par and failing, is

books of the company with the par value (\$5,000) and debited with \$4,500. Ames also purchased outstanding claims against the corporation of the par value of \$4,000 for \$2,300. The company is now insolvent and in process of winding up. The receiver seeks to collect from Ames the \$500 apparent profit in the first transaction, and also asks the court to exclude Ames from proving against the company for the par value of the claims purchased. Can he succeed on either or both of his claims, and why?

9. The X. Foundry Co. was organized in 1895 with a paid-up capital of \$50,000. In 1900 its liabilities were \$20,000, unsecured. That year it purchased the stock held by Ames, amounting to \$15,000, and conveying to him several lots of land in return, reasonably worth \$15,000. In 1902, as a result of a strike, the foundry was not operated, and the liabilities were increased by \$20,000. In 1903 the foundry was destroyed by fire. As there was no insurance, the loss was total. Assets, consisting of outstanding accounts, \$15,000, and the factory site; liabilities, \$40,000. The land conveyed to Ames has greatly appreciated in value and is now worth \$30,000. Bates is the principal creditor, his claim accruing in 1898. Call is a creditor, whose claim accrued in 1902. The sale to Ames was never submitted to or ratified by the stockholders. The foundry was worth \$30,000, and the stockholders had instructed the directors to insure the building and contents to that amount, which they had failed to do. Can the sale of the property to Ames be questioned by either Bates or Call, or can either or both and those similarly situated have any remedy against the directors of the company?

10. Ames was indebted to the X. National Bank on a loan of \$10,000 now due. Ames borrowed \$12,000 of the Y. National Bank for seven months; the repayment of the loan was guaranteed by the X. National Bank; \$10,000 of the amount received on the loan was applied by Ames in discharge of his claim to the X. National bank. Ames paid \$1,000 on the new loan, but defaulted as to the balance. The Y. Bank sues the X. Bank on the guaranty. Defense, *ultra vires*. Judgment for whom, and for what amount, if any?

AGENCY EXAMINATION

UNIVERSITY OF MICHIGAN, JUNE, 1914

(Professor Goddard)

[In every case give the reasons for your answer. The correct decision of a case is of trifling importance in this examination as compared with clear and effective reasoning to justify your answer. Seek the salient agency issues upon which depends the decision of each case and discuss those only. Dissertations on agency law you remember, but not involved in the question, will not be considered in grading the paper.]

1. R. owned the property in question, but was about to lose it under a mortgage. He applied to E., an attorney at law, to help him save the property. E. said he could not furnish the money, but he thought C. would. He went to C. and arranged that he furnish the money to pay R.'s mortgage, taking a deed from R., with a provision that R. should lease the property from C. with a right to repurchase in five years. If R. did not repurchase, then E. was to manage the property and sell it, dividing equally with C. any profits accruing. R. signed such a deed to C. and took back the lease. The five years expired, and R. has wholly failed to pay the rents provided, or the sum furnished by C., and by the terms of the agreement has forfeited all right to the property. C. brought ejectment against R., who now files an equitable petition to enjoin the ejectment process, to require an accounting from C. and E., and to compel a reconveyance of the property upon his paying the amount shown by the accounting to be due C.

2. An agent of C. Bldg. Co. called on M. and wife to induce them to subscribe to stock in a co-operative creamery company for which C. Co. proposed to erect a creamery. The agent, contrary to his instructions, falsely represented that C. Co. had a process which would take out of the butter the onion and bitter weed taste and odor, and that the company would make butter to sell at 30 cents per pound. M. was financially irresponsible, and C. Co. sues Mrs. M. for failure to pay her subscription. Verdict for defendant, and plaintiff brings error, because the trial court refused to exclude from evidence the false representations of the agent, as being outside the scope of his authority and made without the principal's knowledge, and for excluding from the evidence a post card reading: "Dear Sir: My wife will take one share in your co-operative creamery, giving you four quarterly notes of \$25. I will stand by and help her. If this suits, you can put down one share, Mrs. J. P. M. Very resp. J. P. M."

3. Action by B. against C. and D. to foreclose a mortgage given by C. to B. in 1900. In 1898 A., the duly authorized agent of C., executed to D. a deed in which it was recited that A., on behalf of C., and acting under his power of attorney, granted, bargained, sold, etc., to D. the described premises. The attestation clause read:

"In testimony whereof, the said A., as agent aforesaid, and in pursuance of his power of attorney, has hereunto set his hand and seal. [Signed] A. [Seal]"

Each instrument was recorded the day it was executed, and D. now offers the deed as a defense against the foreclosure.

4. P. in 1892 employed A. to manage his farm for three years, giving him full authority to employ and pay the necessary help, to buy the necessary supplies, and to sell the crops, paying the necessary expenses out of the proceeds. The balance was to be divided, two-thirds to P. and one-third to A. The evidence shows that A. continued to manage the farm until 1912, when he died. In 1902 there was a full settlement between A. and P. to that date, but there is no competent evidence of any settlement since. P. now sues A.'s executor for a full accounting, as by the terms of the contract, till A.'s death.

5. T. secured a judgment for \$1,000 against B. To satisfy it he levied on 40 acres of land belonging to B. and sold it at sheriff's sale in May, 1905. The sheriff's deed was recorded in May, 1906, but meantime in September, 1905, B. sold and conveyed the land to M., who immediately had the deed recorded. There is no direct evidence that M. at that time knew of the sheriff's deed, but Mrs. B. testified that one S. was present at the time the deed was made to M., that he knew of the sheriff's deed, and that he told her he was acting as agent of M. in the purchase of this and other land from her husband. It further appeared that S. was then, and before and after that time, agent of two corporations in the purchase of land, and that M. was a stockholder and officer in both corporations. S. died in 1908, and in 1911 M. brought this action against T. and B. to quiet title, to enjoin defendants from trespassing on the land, and to cancel the sheriff's deed. Judgment for defendants, and plaintiff appeals.

6. G. was general state agent of the Edison business phonograph, and appointed M. his agent in the city of L. to sell on commission. In August M. tried to sell W. Co. six machines, but they wished them put in on trial first. G. refused to furnish them on trial, and M. continued to try to sell to W. Co. In September G. wrote M. that his services were unsatisfactory, and that his agency was revoked from that date. Two days later W. Co. told M. they had concluded to take the

machines. G. refused to sell them through M., saying he would prefer to lose the sale, but W. Co. insisted that M. had worked hard for the contract and they preferred to have him have the sale. The machines were finally shipped to W. Co. by G. direct and they paid him for them. M. now sues for his commission.

7. B. bought two carloads of melons of F. and paid him in cash, F. agreeing to deliver at the station and ship the same for B. over G. Ry. to W. In this enterprise C., station agent of G. Ry., was a partner of B., who told F. that C. would receive the melons and direct the loading. When F. delivered the melons C. required him to sign the bill of lading. The melons were consigned to B. at W. and on the bill of lading C. wrote "Charges guaranteed." F. testified that this was not on the bill of lading when he signed it, but C. testified that he wrote it there before its signing. G. Ry. sued B., C., and F. for the freight charges. Judgment against B. and C., but in favor of F. As G. Ry. cannot collect of B. or C., it prosecutes this appeal from the judgment for F.

8. A. was agent of P. to buy ties. He was authorized when he shipped to draw a draft on P., in favor of himself as agent of P., for the amount paid for the consignment. On the blank forms used for the drafts was printed, "Bill of lading must be attached to this draft." C. Bank cashed such a draft with no bill of lading attached, which P. refused to pay. C. Bank sues, setting up in the declaration that no common carrier was operating at the landing from which the ties were supposed to be shipped, so that no bill of lading could be procured, and that P. had upon several other occasions honored drafts similarly drawn. Defendant demurred. Demurrer overruled, and defendant brings error.

9. P. called on T. with A., whom he introduced as his agent in selling cotton, expressing the hope that T. would order cotton through A. Later T. gave A. an order for cotton from P., and A. shipped the amount, making out a bill of lading with draft at-

tached in his own name. T. supposing A. was acting for P. paid the draft and took the cotton. It turned out to be of inferior grade and practically valueless to T. It also appears from the evidence that A. did not procure the cotton from P., although T. supposed he did; also that A. paid P. on his account in his agency business the proceeds of the draft. P. refused to refund to T. the money he had paid and receive the cotton, and T. brought suit to recover. The court directed a nonsuit, and T. appeals.

10. G. appointed M. its salesman and gave him authority to collect for the goods sold, either in cash or in checks on local banks. In case he received checks they authorized him to indorse them "for exchange only," and to procure therefor bank drafts to remit instead of the local check. M. went to A. Bank and opened a personal account. He told the bank that he was collecting for G., and he was not to remit local checks, but was to indorse them and with the proceeds secure drafts from the Bank of S. He gave as a reason for not opening an account with the Bank of S. that that bank would not collect local checks without a charge. For several years M. collected local checks which he indorsed and deposited in his account with H. Bank, remitting the proceeds, in the form of drafts from the Bank of S., to G. After a time G. suspected M. was not remitting all his collections, and sent an auditor to go over his route and investigate. The auditor found the checks were not deposited in the bank from which the drafts were procured, but he found no evidence of failure to remit all collections, and did not report his findings to G. Later G. sent out another auditor, who found M. was depositing checks in his personal account, and that he had a large shortage in his account. All this he reported to G., who now sues H. Bank for the amount of the checks received on M.'s indorsement and credited to his personal account. H. Bank set up as a defense that it did not know the limitations on M.'s authority, and that G. by his long concurrence had ratified M.'s act. Verdict and judgment for plaintiff, and defendant appeals.

PROPERTY EXAMINATION

NORTHWESTERN UNIVERSITY, JUNE, 1914

(Professor Kales)

I

1. Describe briefly:

- (a) The kinds of tenure and their incidents.
- (b) The principal statutes affecting tenure and their operation.
- (c) The common-law rule regarding the creation of future legal interests in real estate.
- (d) The additional liberties (if any) permitted in the creation of future legal estates by the Statute of Uses.

2. Where a conveyance was to A. and the heirs of his body, what was the nature of A.'s interest:

- (a) Before the Statute De Donis?
- (b) After the Statute De Donis in England?
- (c) What is the nature of A.'s interest in American jurisdictions today?

3. A., being the owner in fee simple of Blackacre, bargained and sold it to B. and his heirs, to the use of C. from and after the death of A.

- (a) What legal interest has A. prior to his death?
- (b) Is C.'s future interest valid?

4. A., being the owner in fee of a pond, by an instrument under seal, for valuable consideration, granted the right to B. and his heirs forever to take ice from the surface of the pond. B. subsequently transferred his rights under this instrument to D. After B.'s death A. filed a bill to enjoin D. from continuing to cut ice. Will it lie?

5. B., on land which he owned, had operated a tallow factory for ten years. During that time the neighboring property had been vacant. Owing to increased facilities for transportation, flat buildings were beginning to be put up on the neighboring property. A., who owned one of these, brought an action against B. for damages for fouling the air. How would you instruct the jury?

6. A stream runs through A.'s land, and then through B.'s. A. agreed orally with B. that the latter might maintain a dam on his own land, although it flooded A.'s land. Afterwards he ordered B. to remove the dam, and, on B.'s refusal, A. entered on B.'s land and removed the dam. Has A. any defense to an action of trespass brought by B.?

7. A. is the owner in fee of lots 1 and 2, adjoining each other. A. leases lot 2 to B. for ten years for residence purposes, and covenants with B. and his assigns that A. and his assigns will not use lot 1 for saloon purposes during the term. A. conveyed lot 1 to C., who, contrary to the terms of the covenant, opened a saloon on lot 1.

(a) Can B. sue C. for breach of the covenant?

(b) If B. had assigned his leasehold interest to C., and A. had opened the saloon on lot 1, could C. have sued A. for breach of the covenant?

8. A., being the owner of Blackacre in fee, purchased an engine of B., and at the same time gave to B. a chattel mortgage to secure the payment of the purchase price. Thereafter A. annexed the engine to Blackacre, so that it became a part thereof. Thereafter A. mortgaged Blackacre to C., who recorded his mortgage as a conveyance of land and had no actual notice of B.'s rights under the chattel mortgage. A. thereupon became hopelessly insolvent and B. started foreclosure proceedings against Blackacre, claiming the engine as part thereof.

(a) Has B. priority over C. as to the engine?

(b) What should B. have done, if anything, to have insured priority over C. as to the engine?

II

1. A. purchased land on the shore of Lake Michigan from the United States in 1850. At the time the exact line of the lake shore was indicated by government survey. Since then, by imperceptible additions, 100 feet of accretions have been added to the shore. It is admitted that the accretions were at least 40 per cent. greater than they would have been if A. had not put out breakwaters into the lake. It is also admitted that when the breakwaters were first put out into the lake inroads by the waves into A.'s land were threatened, and that A.'s sole object in putting out the breakwaters was the protection of his property. The state of Illinois, having succeeded to all the rights of the United States to the land of the lake beyond the original fixed line of the lake in 1850, brought ejectment against A. for the 100-foot strip of accretions. Can the state recover?

2. In 1862, A. owned lot 15 and built a house upon it, and in 1866 inclosed with it a strip which X. owned, 14 feet wide, adjoining lot 15 on the south. A. retained possession of his own lot 15 and of the 14-foot strip until 1871, when he conveyed by a special warranty deed lot 15 to his brother B., and gave possession of the entire premises, including the 14-foot strip, to B. B. occupied until 1887, when he died, and B.'s two children then filed a bill for partition of lot 15 and the 14-foot strip. A. and X. were made parties. The decree found that the two children of B. were the owners in fee simple of lot

15 and the 14-foot strip, and decreed partition. Is this correct?

3. Suppose an oral lease from A. to B. for five years from February 1, 1824. On January 1, 1829, A. gave B. six months' notice to quit. When could A. enter?

4. X. died, leaving a row of five stores as follows:

5	4	3	2	1
Hall			Hall	
5	4	Stairway	3	2
			1	

On the second floor of each of the five stores there was a common hallway with a common staircase, half in the building on lot 4 and half in the building on lot 3, reaching a main entrance on the first floor. Lots 1, 2, and 3 were assigned to the widow as dower, and lots 4 and 5 went to a devisee. The widow filed a bill to restrain the devisee from tearing down the building on lot 4 and thereby destroying her right to use the half of the staircase on lot 4. Should a permanent injunction be granted?

5. A., having no title to Blackacre, executed a deed of conveyance purporting to convey title to it to B. in fee with covenants of seisin and quiet enjoyment, as against any superior title. B. then entered and enjoyed the premises for a year, and then conveyed to C. and his heirs. C. was subsequently evicted by X., who claimed under a superior title. Can C. sue A. on either one or both of A.'s covenants of title?

III

1. X., by will, devised Blackacre to A. for life, and then to such children of A. as should attain 21, and then added these words: "Meaning and intending hereby that such children shall take who reach 21, whether that event happen before or after the death of A." A. died after his eldest child had reached 21, but before the other children had reached 21. Subsequently, on all reaching 21, those who reached 21 after the death of A. filed a bill for partition, making D., who had reached 21 before the death of A., a party. What are the rights of the parties?

2. A testator bequeathed \$100,000 to a trustee, to pay one-half the net income to each of his two children, and thirty years after his death to pay \$50,000, or the securities held in lieu thereof, to his child A., and \$50,000, or the securities held in lieu thereof, to his child B. A. died before the thirty-year period, leaving C. his only child and next of

kin. B. survived the thirty-year period and claimed the whole fund. Is he entitled?

3. Suppose in the case last stated that the testator had provided that if either child died during the thirty-year period without leaving issue the income should be payable to the survivor and the principal also at the end of the thirty-year period, and A. died first leaving issue, and then B. died without issue within the thirty-year period. Assume, also, a general residuary gift in favor of D. Who would be entitled?

4. A testatrix died, leaving B. and C., her children and only heirs at law. She devised Blackacre to trustees, in trust for her husband for life, and then to B. and C. for their lives, with remainders over to the issue of each of B. and C. for life, with an ultimate gift over to the heirs at law of her husband. The husband died, leaving B. and C. his only heirs at law. B. died unmarried and without issue, and devised all his interest in the trust estate to C., and C. thereafter died, unmarried and without issue, and devised all his interest in the trust estate to D. At the time of C.'s death the nearest living relative of the husband was X. In a suit between D. and X., is either entitled to the trust estate, and, if so, which one?

5. Land was devised to A. for life, remainder to B. and his heirs, and to A. was given a power to make leases for terms not exceeding twenty-one years. A. made a parol agreement with T. to give him a lease for twenty years, and T. entered into possession, made improvements, and paid rent for two years, but no written lease was given. At the end of the two years A. died; T. brings a bill against B. for specific performance of the agreement for a lease. Should relief be granted?

6. A. devised Greenacre to trustees and their heirs, in trust to pay the rents to B. for life, and on his death to convey the land to those of B.'s children who should reach thirty and their heirs, as tenants in common. He devised the residue of his estate to C. B. had three children: D., who was thirteen years old at A.'s death; E., who was then four years old; and F., who was born after A.'s death. They have all reached thirty in B.'s lifetime. To whom should the trustee, on B.'s death, convey the land?

7. A., being seised in fee of Blackacre, conveyed it by lease and release to F., to the use of himself for life, or until he became bankrupt, remainder to the use of his wife for life, remainder to the use of the issue of the marriage in fee. A. became bankrupt. What interests, if any, could A.'s assignee in bankruptcy reach in Blackacre?

Organized State Boards of Bar Examiners

[This list, compiled from replies to circulars sent out to the different states, aims to show all the states in which the movement towards small, permanent Boards of Bar Examiners, organized for the whole state, either under rules of court or legislative enactments, has reached definite and affirmative results. A reference to the rule of court or the statute under which the board is organized is given with the name of each state. The list seeks to omit Boards of Bar Examiners which are merely examining committees. Neither does it name those states in which the functions of a Board of Bar Examiners are discharged, however excellently, by judges still on the bench. In some states, as in Kentucky, an effort, within the year, to obtain a permanent organized board has failed for the time being. It may be that in some other state, which appears to be without an organized board, a similar effort has been successful. But, if so, no word to this effect has reached the compiler. A revised list will be submitted at the 1915 meeting of the American Bar Association. Any information as to errors or changes in the present list should be sent to Charles M. Hepburn, Secretary of the Section of Legal Education, Indiana University Law School, Bloomington, Indiana, or the editor of this journal.]

ALABAMA

Organized under Code Alabama (1907) §§ 2972-2977; Civil Code (1907) pp. 216-218.

Thomas E. Knight, Chairman, Greensboro.

J. Winter Thorington, Secretary, Montgomery.

W. F. Dickinson, Opelika.

ARIZONA

Organized under Rev. Stats. (1913) § 262, p. 300.

Selim M. Franklin, Tucson.

P. J. O'Sullivan, Prescott.

A. C. Baker, Secretary, Phoenix.

COLORADO

Organized under rule of court (Supreme Court Rules, April, 1905; see 80 Pac. xi); authorized by statute (Rev. Stats. 1908, p. 226).

J. A. Ewing, Chairman, First Nat. Bank Bldg., Denver.

John T. Jacobs, Greeley.

Robt. S. Gast, Pueblo.

Fred. A. Sabin, La Junta.

Chas. L. Allen, Kittredge Bldg., Denver.

CONNECTICUT

Organized under rules of court (1890). See 58 Conn. 589. No statute.

George W. Wheeler, Chairman, Bridgeport.

James E. Wheeler, New Haven.

William B. Boardman, Secretary, Bridgeport.

Gardiner Greene, Norwich.

William Waldo Hyde, Hartford.

Charles Phelps, Rockville.

Milton A. Shumway, Danielson.

Edward M. Day, Hartford.

James E. Cooper, New Britain.

Frank D. Haines, Middletown.

Edwin B. Gager, Derby.

George D. Watrous, New Haven.

John T. Hubbard, Litchfield.

Edward D. Robbins, New Haven.

Howard B. Scott, Danbury.

DISTRICT OF COLUMBIA

Organized under rules of court (1909 Sup. Ct. Dist. Col.).

William H. Dennis, Columbian Building.

Irving Williamson, Columbian Building.

Daniel W. Baker, 410 Fifth St., N. W.

John E. Laskey, Fendall Building.

Edward H. Thomas, Hibbs Building.

Walter C. Clephane, Wilkins Building.

Ralph Given, Secretary, City Hall.

GEORGIA

Organized under statute (Laws 1898, p. 83).

Alex. C. King, Chairman, Atlanta.

Jos. A. Cronk, Secretary, Savannah.

Henry R. Goetchius, Columbus.

ILLINOIS

Organized under rule of court (Rule 39 of Supreme Court, taking effect July 1, 1908; see 85 N. E. x).

Charles S. Cutting, Chicago.
Geo. W. Wall, Du Quoin.
Charles L. Bartlett, Quincy.
David B. Snow, Ottawa.
Wm. B. Wright, Effingham.

IOWA

Organized under Code (1907) §§ 311a, 311b, 311c.

George Cosson, Chairman, State House,
Des Moines.
Chas. D. Leggett, Fairfield.
Ralph Pringle, Red Oak.
F. W. Sargent, Des Moines.
Chas. W. Lyon, Des Moines.
James Devitt, Oskaloosa.

KANSAS

Organized under rule of Supreme Court (February 10, 1914; see 141 Pac. xli); authorized by statute (Gen. Stats. 1905, § 397; Gen. Stats. 1909, p. 107, §§ 429-430).

G. H. Buckman, Chairman, Winfield.
J. D. McFarland, Topeka.
D. M. Dale, Wichita.
A. M. Keene, Fort Scott.
Wm. Easton Hutchison, Secretary, Garden City.

MAINE

Organized under Rev. Stats. (1903) c. 81, § 25.

John Wilson, Bangor.
Harry Manser, Auburn.
Harvey D. Eaton, Waterville.
Clarence W. Peabody, Portland.
Leonard A. Pierce, Houlton.

MARYLAND

Organized under Acts 1898, c. 139; Code 1911, art. 10, amended Acts 1914, c. 655.

David G. McIntosh, Towson.
John Hinkley, 215 N. Charles St., Baltimore.
Stevenson A. Williams, Belair.

MASSACHUSETTS

Organized under Rev. Laws, c. 165, §§ 39, 40.

Hollis R. Bailey, Chairman, Cambridge.
George S. Taft, Secretary, Uxbridge.
Henry W. Bragg, Boston.
L. Elmer Wood, Fall River.
John F. Noxon, Pittsfield.

MICHIGAN

Organized under Act 205, Laws 1895, as amended by Act 163, Laws 1913.

Charles M. Wilson, Grand Rapids.
Lorenzo T. Durand, Saginaw.
Clarence A. Lightner, Detroit.
Charles W. Nichols, Lansing.
Lincoln Avery, Port Huron.

MINNESOTA

Organized under Compiled Laws (1913) c. 85, §§ 4945-4961.

Frank L. Cliff, President, Ortonville.
Edward Lees, Winona.
Frank E. Futnam, Blue Earth.
William H. Lightner, St. Paul.
Eli Southworth, Secretary, Shakopee.
James E. Jenks, St. Cloud.
Charles J. Traxler, Minneapolis.

MISSOURI

Organized under Annotated Stats. (1906) §§ 4920-4923.

Vinton Pike, St. Joseph.
Robert A. Anthony, Fredericktown.
W. S. Jackson, Warsaw.
Robert M. Reynolds, Marshall.
Clifford B. Allen, Secretary, St. Louis.

NEBRASKA

Organized under Rev. Stats. (1913) § 266.

W. L. Anderson, Secretary, Richards Block, Lincoln.
George W. Tibbets, Hastings.
George W. Shields, Omaha.
W. H. Barnes, Fairbury.
J. G. Beeler, North Platte.

NEW HAMPSHIRE

Organized under rules of court (May 1901; see 59 Atl. vii, viii). No statute.

Edwin G. Eastman, Exeter.

Fred C. Demond, Concord.

George F. Morris, Lancaster.

Alfred H. Mitchell, St. Clairsville.

Edgar L. Weinland, Columbus.

E. B. Leonard, Warren.

James J. Maguire, Cleveland.

Anthony B. Dunlap, Cincinnati.

C. R. Cary, Millersburg.

NEW JERSEY

Organized under rules of court (May, 1902; see 51 Atl. vi). No statute.

Charles H. Hartshorne, Chairman, 239 Washington St., Jersey City.

Alonzo Church, 810 Broad St., Newark.

Charles V. D. Joline, 110 Market St., Camden.

NEW MEXICO

Organized under Laws 1909, c. 53.

W. J. Lucas, President, East Las Vegas.

C. C. Catron, Santa Fé.

M. E. Hickey, Albuquerque.

Jose De Sena, Secretary, Santa Fé.

NEW YORK

Organized under Judiciary Law (Laws of 1909, c. 35) §§ 53, 56, 88, 460-465, 467.

William P. Goodelle, President, Syracuse.

Frank Sullivan Smith, 60 Wall St., New York City.

Franklin M. Danaher, Secretary, Bensen Bldg., Albany.

NORTH DAKOTA

Organized under Compiled Laws (1913) § 782.

Emerson H. Smith, Fargo.

H. A. Bronson, Grand Forks.

Jeff M. Myres, Grafton.

OHIO

Organized under General Code, §§ 1701-1705 (Rev. Stats. §§ 560-561).

George A. Beard, Chairman, Springfield.

John J. Sullivan, Cleveland.

C. J. Mattern, Dayton.

Frank Davis, Jr., Batavia.

OKLAHOMA

Organized under Session Laws 1910, c. 106, § 1.

Benj. F. Williams, Jr., Chairman, Norman.

W. J. Horton, McAlester.

Chas. A. Cook, Muskogee.

E. F. Lester, Wilburton.

Wm. E. Utterback, Durant.

Frank Dale, Guthrie.

D. A. McDougal, Sapulpa.

Redford Bond, Chickasha.

F. M. Cowgill, Dacoma.

Jos. G. Ralls, Atoka.

John F. Curran, Enid.

OREGON¹

Appointed by rule 35 of Supreme Court (December 16, 1913), to conduct examination in open court.

John M. Gearin, Portland.

H. G. Platt, Portland.

James B. Kerr, Portland.

Charles H. Carter, Pendleton.

Oscar Hayter, Dallas.

PENNSYLVANIA²

Organized under rules of Supreme Court.

Samuel Dickson, Philadelphia.

W. U. Hensel, Lancaster.

Thomas Patterson, Pittsburgh.

Edward J. Fox, Easton.

¹ This board, under rule of court, "shall be composed of five members of the Oregon bar, in good standing, to be nominated by the president of the Oregon Bar Association, and confirmed and appointed by the judges of the Supreme Court, for the term of three years from date of appointment." They receive no salary whatever nor travelling expenses.

² In addition to the regular members of the board, there are four assistant examiners: William Righter Fisher, of Philadelphia; Thomas Stephen Brown, of Pittsburgh; James M. Harris, of Scranton; Paul A. Kunkel, of Harrisburg.

RHODE ISLAND

Organized under rule of court, authorized by statute. See Gen. Laws 1909, c. 272, § 2.

Daniel R. Ballou, Providence.

Frank L. Hinckley, Providence.

James C. Collins, Providence.

Clarence A. Aldrich, Providence.

Edward C. Stiness, Secretary, Providence.

TENNESSEE

Organized under Acts 1903, amended chapter 465.

W. G. M. Thomas, President, James Bldg., Chattanooga.

F. T. Fancher, Sparta.

James L. McRee, Secretary, Tennessee Trust Bldg., Memphis.

VERMONT

Organized under Laws 1898, No. 157; Pub. Stats. (1906) § 1338.

Roger W. Hulburd, Chairman, Hyde Park.

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C. P. Lund, Spokane.

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Robert M. Davis, Tacoma.

C. S. Reinhart, Secretary, Olympia.

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Organized under Wisconsin Statutes (1913) § 2586.

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Frank M. Hoyt, Milwaukee.

W. R. Foley, Superior.

W. R. Bagley, Madison.

L. J. Rusk, Secretary, Chippewa Falls.

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William B. Ross, Secretary, Cheyenne.

James H. Burgess, Sheridan.

Ralph Kimball, Landor.

Walter B. Dunton, Rock Springs.

7200

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about 21 years of age
brutally warranted sound in body and mind, and the right and title to the above
named slave We do warrant unto the saidd Ffornberger &c
heirs, and assigns against the claims of all persons whomsoever.

In testimony whereof W2 have hereunto set our hand and seal,
day and date above written.

Politeness,

W. J. Adams

CONFIDENTIAL (SEAL)

Fac simile of a legal document which few of the present day lawyers have encountered in their practice.* The copy was made from the original owned by Mr. Norman B. Morrell, of the Knoxville, Tenn., Bar

²For cases in point, see Vol. 44, *Century Digest, Slaves*, §§ 21-26.

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ALL BOOKS MAY BE RECALLED AFTER 7 DAYS

- 2-month loans may be renewed by calling (510) 642-6753
- 1-year loans may be recharged by bringing books to NRLF
- Renewals and recharges may be made 4 days prior to due date.

DUE AS STAMPED BELOW

AUG 23 2002

12.000 (11/95)

